Supreme Court, U.S.
FILED

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No. _____

IN THE

Supreme Court of the United States

CHRISTOPHER J. ODINKEMELU
Petitioner

vs.

JORJA WILLIAMS, MYRTLE FOUST,
KAREN JONES, VERONICA MCLEAN,
and ALICIA OAKLEY RESENDIZ
Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO
U. S. COURT OF APPEALS,
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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1 40 PM

QUESTION(S) PRESENTED

1.) Can a good cause toll the running of the Statute of Limitations allowed for filing any kind of Civil case against defendants?

2.) Could a defense witness in a Civil Action also, be referred to, or identified as a Co-defendant in the same case that she was listed as one of defense witnesses when judgment was entered?

3.) Could not the U.S. District, and State Courts at Greensboro, and High Point be erring when their judges entered Judgments that dismissed the Review process, and Hearing Preceedings of this action when the correct answers to the above two questions are just "Yes", and "No"?

4.) Is there any Legal Authority that allows a defense party in a Civil case to file for a transfer of a filed case from one state court to another, in the same state?

5.) Does a State Court have authority/power to hear/try a Civil Case which its amount in controversy is in excess of 10 to 90 Thousand Dollars; and which its members of both parties have Diversity of Citizenships?

6.) Can a State Court hold a second Hearing, or Trial of a case of Civil nature which its first Hearing/Trial was originally, dismissed unjustly with Prejudice by another judge of same state court without obtaining a "Reversal Court Order" from its State Court of Appeals that would state reasons for the reversal of the first judgment entered with prejudice before a second Hearing could be allowed to hold by another judge of same state court?

7.) Does a Plaintiff not have a Right to "Fourteenth Amendment Rights at a Review Process, and in the Hearing of a Civil Case?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix __A__ to the petition and is

[ ] reported _____ at; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

The opinion of the United States district court appears at Appendix __B__ to the petition and is

[ ] reported _____ at; or,

[ ] has been designated for publicatien but is not yet reported; or,

[X] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix __C__ to the petition and is

[ ] reported _____ at; or,

[ ] has been designated for publication but is not yet

reported; or,

[ ] is unpublished.

The opinion of another U.S. District judge from a Federal court appears at Appendix __D__ to the petition and is

[ ] reported _____ at; or,

[ ] has been designated for publication but is not yet

reported; or,

[X] is unpublished

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was on September 26, 2001.

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____ , and a copy of the order denying rehearing appears at Appendix _____ .

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was March 27, /Aug23. A copy of that decision appears at Appendix C .

[ ] A timely petition for rehearing was thereafter denied on the following date: _____ , and a copy of the order denying rehearing appears at Appendix _____ .

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

Pursuant to Rules 10(a), and 10(b) of the Supreme Court of the United States, the Plaintiff, Christopher J. Odinkemelu respectfully, submits this "Writ of Certiorari" for the court's review, and necessary actions.

The U. S. District Court for the Middle District of North Carolina, and the State Superior Court of North Carolina have decided some important federal questions of Federal Law in ways that conflict with relevant decisions of this court: and also, the Court of Appeals for the Fourth Circuit at Richmond, VA has sanctioned such decisions which have so far departed from accepted and usual course of judicial proceedings, and therefore, calls for exercise of Supreme Court's supervisory power.

The Rights of Checks and Balances upon both federal/ state courts all over the United States by Supreme Court of United States is what the Judicial System is all about. Both federal and state courts for the Middle district of North Carolina have denied the Plaintiff of his Rights to the Fourteenth Amendment of the Constitution of the United States when a state superior court judge allowed the counsel for defendants in this action to write a court order for the same case that the defense counsel participated in its arguments from both parties as defense counsel for defendants in this action. And such written statement from defense counsel Pappas was signed into court order of the second Hearing on this case held on August 23, 2000. The U. S. District Court for the Middle District of NC, also, denied Plaintiff same 14th Amendment Rights when it reassigned review process to 2 judges with Bias and Malice against Plaintiff.

Both judges sought for "Revenge" simply, because the Plaintiff challenged their partial judgments entered against the Plaintiff's prior federal action filed in 1998 against his former employer, the Consolidated Stores which discriminated, and retaliated against him on the basis of his country of origin.

When this action was filed as case #99 CVD2883 in the District Court Division of the General Court of Justice at

High Point on November 28, 1999, Plaintiff thought that the above stated court of Law was a branch of Federal District Court in North Carolina.. The caption of the above Civil Action was CHRISTOPHER J. ODINKEMELU VERSUS JORJA WILLIAMS, MYRTLE FOUST, VERONICA MCLEAN, KAREN JONES, AND ALICIA OAKLEY RESENDIZ. And charges against these defendants included using of false allegations to interfere with Plaintiff's Constitutional Rights, and obstructing Plaintiff from exercising his Civil Rights to Litigations against his former employer with those false allegations which they also, stated in their sworn Affidavits procured against Plaintiff when they posed as witnesses for defendant of that Civil Right Action, the Consolidated Stores Corporation.

The District Court Division at High Point could not take the case because the amount of money in controversy is in excess of $10,000.00; but the District Court Division failed to inform the Plaintiff that it had no subject matter jurisdiction over this case before defense counsel for defendants filed for transfer of this case from one state court to another state court in the same state without any legal authority to do so on March 27, 2000. (See the attached Plaintiff exhibit "#1".) The counsel for defendants urged the Superior Court Judge who presided over the Hearing to dismiss this case on the basis of having allegedly, violated Rules 12(b)(6), and Rule 41(b) of Federal Rules of Civil Procedure. (See Plaintiff's Ex. #2.) That Plaintiff's complaint made claim for Punitive Damages but demanded also, specific monetary Relief for $6,000,000.00. On the same March 27, 2000, a superior court judge at High Point issued an unjust court order that transferred this case from District Court Division to Superior Court Division in the same state. (See Plaintiff's Ex. #3.)

When Plaintiff appealed that unjust court order of 03/27/00 to the State Court of Appeals at Raleigh, Superior Court Reporter who recorded the Hearing proceeding on 3/27/00 refused to give Plaintiff a copy of the court transcript of March 27 Hearing on this case, by claiming that she was not instructed by the court to record that Hearing of March 27, 2000. Hence, the Plaintiff was not able to

furnish the State Court of Appeals in Raleigh with the court transcript that the court needed for the appeals process. (Ex. #3-B.)

Therefore, on May 19, 2000, the Plaintiff filed a second Civil Action #00CVD1337 in the same District Court, partly because the District Court Division at High Point failed to let Plaintiff know that the reason why it could not take this case when it was filed as case #99 CVD2883 was because it lacked subject matter jurisdiction over it; and partly because the Plaintiff still at that time, did not know that the court he was filing his first & second lawsuits, and paying their filing fees was not a branch of federal district court which is solely authorized to Hear and try this case pursuant to Title 28, USC §§1331 & 1332. The same district court division did nothing when Plaintiff filed the second suit against the same defendants. The court did not care to inform Plaintiff that it lacked jurisdiction over this case.

On August 21, 2000, defense counsel for defendants in this action filed for another motion to transfer the second filing of this case from same state court to same state superior court without a legal authority to do so. (See Plaintiff's Ex. #4.) Another superior court judge presided over the second Hearing of this case on 08/21/00 without seeing a reversal order from the State Court of Appeals in Raleigh reversing the first court order that was entered with prejudice by the first superior court judge against the first Hearing of same case on 3/27/00. At the end of that second Hearing on this case, the superior court judge allowed defense counsel who represented defendants at that second Hearing to issue , or draft a court order dismissing the second Hearing, and superior court judge signed it into a court order entered by the court for that 2nd Hearing. (See Plaintiff's Ex. #5.)

When Plaintiff finally filed his case in the actual federal district court at Greensboro, (after he had realized that the court he filed his case on two occasions lacked jurisdiction), the federal district court not only erred by granting defendants the dismissal of this case, but also, denied Plaintiff of his "Fourteenth Amendment Right" of

American Constitution. On the request of 2 federal judges who were looking for "Revenge" against the Plaintiff, District Court for the Middle District of North Carolina at Greensboro, removed the Review Processing of this case from Magistrate Judge Eliason (who was originally assigned to review this case for recommendations) and reassigned it to Magisrate Judge Sharp who has "Bias, and Malice" against the Plaintiff which he conceived from Plaintiff's 1st federal action in 1998.

Magistrate Judge Sharp's recommendations to District Judge Beaty on January 5, 2001 were primarily based on the flawed judgments entered against the Hearings on this case by 2 judges of North Carolina Superior Court at High Point. State Courts have no subject matter jurisdiction over this case; therefore the state court orders unconstitutionally imposed on this case have no bearing, nor any binding on this case.

District Judge Beaty also, based his unjust judgment on the review of this case by the district court solely on the recommendations of Magistrate Judge Sharp whose motive was "Revenge against the Plaintiff as he based his findings on the contents of the state court orders that should not be used in forming both the recommendations, and judgment that federal district court entered unjustly against the review of this action on January 5, & April 3, 2001, respectively. (See Plt. Ex. #6 & 7.)

On April 16, 2001, Plaintiff appealed the court order of April 3, 2001, entered against the review process of this case by District Judge Beaty to U. S. Court of Appeals for the 4th Circuit at Richmond, Virginia. (See Plaintiff's Ex. #8.) On September 26, the United States Court of Appeals sanctioned the unjust decision that district court entered against the review process of this action which has so far departed from the accepted, and usual course of judicial proceedings, hence, the Plaintiff, Christopher Odinkemelu respectfully, calls for an exercise of the United States Supreme Court's supervisory power to rectify the above stated abuse of "Rules of Law" by defense party; and misuse of power of office by federal/ state courts, and U. S. Court of Appeals.

ARGUMENT

The "Rules of Law" are no respecter of person's race, color, profession, or nationality; but both federal/state courts judges who handled the review procedures & Hearing proceedings of this action did circumvent most of the Rules of Law involved in this case every time that defense party violated them. Instead, those judges were maliciously, bent against Plaintiff by playing partiality in interpreting those Rules of Law the defense counsel claimed that the Plaintiff in this case allegedly, violated those Rules of Law without further & thorough verifications to ascertain the accuracy of the alleged violations before using such claims against the Plaintiff's case. The above stated report constitutes an Abuse of Power of Office and a violation of the "Fourteenth Amendment Rights", therefore calls for an exercise of the U. S. Supreme Court's Supervisory Power.

When defense party "without legal authority" filed Motions for the Transfers of this case from one state court to another state court in the same state, the state superior court judges circumvented the Rule of Law that barred defense party from filing for such transfers in the same state, and granted those motions before they inappropriately presided its Hearings that resulted to dismissals of this action before its trial stage. Even, at one of its Hearing, a superior court judge stated in his ruling recorded in the court transcript attached here as Plaintiff's exhibit #9, that "There is no Statutory Avenue that can allow for a transfer of cases from one state court to another state court in the same state, by the defense counsel. Yet, his action was in conflict with what he said when he granted defense party the motion that transferred this case from state court to the same State Superior Court for a second time. The same superior court judge who granted defense party their second motion to transfer, and dismiss this case also, authorized same defense party to write a court order of same Hearing that defense counsel Pappas & Moore made their arguments for defendants at the same second Hearing of this action which the same Judge

Greeson signed into a court order on August 23, 2000. (See court order of August 23, 2000 issued by the state superior court of North Carolina as Plaintiff's exhibit #10.) The contents of the court order conflict with the court transcript recorded from the Second Hearing proceeding (for which the court order was written out by defense counsel Pappas & Moore). For example: On page 26 of the referenced Court Transcript, the court ruled that defense "Motion" being heard at that Hearing would be denied & dismissed since the court could not in any way rule based on any of the matters that were presented to the court. That was another way to say that the court had no jurisdiction over the case it was holding its Hearing on defense Motion to transfer and dismiss . Also, on page 27 of same court transcript, the court ruled that "there is no statutory avenue that will also, transfer this case from one state court to another state court in the same state." That also, was another way of saying that defense party had no legal authority to ask for transfer of this case from state court to superior court of same state. None of these vital points was entered in the court order that defense counsel wrote for superior court Judge Greeson's signature. Instead, they stated on page "1" of the said court order of August 23, 2000, that the court was of the opinion that the motion to transfer should be *allowed*, and the motion to dismiss should be *allowed also*. The same superior court judge who had made the ruling recorded in the court transcript at same Hearing signed the above stated court order written by defense counsel Pappas & Moore; thereby, conflicting with his own words. The court order was flawed, but did not stop there. It also, made the district court order that was based on its contents a flawed court order too.

The two superior court judges who unprecedentedly, presided over the two Hearing Proceedings of this case conducted at the state court level on March 27, and August 23, 2000, did ignore the "Rule of Law" that requires only the federal district court in the United States to handle cases that have members of both parties with diversity of citizenships, and with amounts in controversies in excess of $10,000.00, pursuant to Title 28 USC Sections 1331 &

1332, as amended. (See the attached Pl. Ex. #11.)

Any "Conspiracy to Interfere with an Individual's Civil Rights" to exercise his, or her Constitutionally protected Rights against "Discriminations, and Retaliations" is a violation of Title 42, USCS sections 1983, 1985, & 1988, as amended. Defendants in this action had conspired against the Plaintiff, and used false allegations to stop Plaintiff from protesting against his former employer's discriminations and retaliations towards him. The defendants also, disrupted the Plaintiff's legal proceedings against his former employer, the Consolidate Stores Corporation with same false allegations they stated in their sworn Affidavits which they procured against Plaintiff when they posed as defense witnesses for CSC in 1st federal action in 1998. (See the Plaintiff's Exhibit #12 .) The above stated violations are Federal Rules, and ought have been tried by Federal Courts, but not by State Courts of law.

Judge Albright of the Superior Court Division, who presided over the first state Hearing of this case on March 27,2000 and issued an unjust court order with prejudice which dismissed the first Hearing of this case at state level was aware that defense party had no legal authority to file for a transfer of this case from one state court to another in the same state. The State Superior Court had no Subject Matter Jurisdiction in this case while Judge Albright & Judge Greeson were presiding over its Hearings at state court level; therefore, none of the court orders issued for those Hearings had any bearing nor binding on this case. Also, Judge Albright did not conduct any "Findings of Fact" on this case before he issued the state court order of March 27; it was contrary with the Rule of Law which requires conducting of "Findings of Fact" before ruling on cases that involve Rule 12(b)(6); otherwise, such ruling is subject to a Reversal Order by Court of Appeals. Hence the two state court orders issued against this case by Judge Albright, and Judge Greeson can not be binding, and should not be the basis of evaluating this case.

The second state superior court judge who had presided over the second Hearing of this case on August 23,

2000, was aware that the state superior court had no subject matter Jurisdiction on this case pursuant to Title 28, U.S.C. sections 1331, & 1334, and Title 42, U.S.C.S. sections 1983, 1985, & 1988, as amended. Judge Greeson was aware also, that he could not legally, preside over the second Hearing of the same case which its first Hearing was dismissed with prejudice by another superior court judge on March 27, 2000, without having a reversal court order from the State Court of Appeals stating that the first dismissal court order issued with prejudice for this case on March 27, 2000 had been reversed before that second Hearing could be allowed by law. Therefore, the second state court order issued against the 2nd Hearing of this case on August 23, 2000, by Judge Greeson had no bearing, no binding on this case because that court order was in fact made "moot" by the doctrine of "Rule of Law" which requires a reversal court order before a second Hearing/ Trial of any case that its first Hearing/Trial was originally dismissed with prejudice could be allowed to hold.

Both Superior Court Judges who presided over the two Hearings of this case on March & August, 2000, purposely, ignored to adhere to the doctrines of the above stated Rules of Law which barred them from presiding, or entering any judgment for the Hearings of this case. Instead, they focused on only what the defense counsel falsely claimed that Plaintiff violated by filing his complaint against defendants in this action.

They claimed among other things, that Plaintiff's complaint against defendants was barred by the doctrines of Rules 12(b)(6) & 41(b) of federal/state Rules of Civil Procedure.

Precisely, if defense claims that Plaintiff's complaint against defendants in this action is barred by the doctrines of Rules 12(b)(6), & 14(b) are correct (which they are not), it did not in anyway, change the fact that defense party had no legal authority to file motions for transfer of this case from one state court to another in the same state. Also, it did not change another fact that the State Superior Court presided over a second Hearing of the case which its first Hearing was dismissed with prejudice without first,

obtaining a reversal court order from the State Court of Appeals which could have stated reasons for the reversal of the first court order entered with prejudice before that second Hearing on the same case could be allowed to hold pursuant to the doctrine of the Rule of Law on cases dismissed with prejudice at their first Hearing/Trial. Finally, it did not also, change the main fact that the state court had no Subject Matter Jurisdiction over the case it presided its Hearings pursuant to Title 28, USC, sections 1331, & 1332, and Title 42 USCS sections 1983, 1985, & 1988, as Amended by the Congress. Therefore, if the State Court violated the Rules of Law in its attempts to exercise its judicial proceedings on the allegations presented by defense counsel that Plaintiffs complaint against defendants in this action violated Rules 12(b)(6), & 41(b), the Court Orders issued for this case at those Hearings were "Null and Void", and had no bearing, nor any binding on this action.

This was the fact that federal district court ignored while the review process was going on there, but the court focused on only the Rules that defense counsel for defendants in this case had claimed that Plaintiff's complaint violated. The federal district judge and magistrate judge based their findings of fact primarily, on the contents of the state court orders entered at those illegitimate Hearings conducted by state superior court. See pages 3, 4 ,5, & 10 of Recommendations of U. S. Magistrate Judge dated January 5, 2001, Pl. Ex. #7, and page 1 of court order dated Apr. 3,2001, Pl. Ex. #8, which the U. S. Court of Appeals sanctioned based on void Federal/State court orders.

The defense counsel, Peter Pappas, and Larry Moore lied under Oath, and deceived the state court judges with false claim that one of the defendants in this Civil Action named Williams was a co-defendant in the Plaintiff's first federal action against his former employer, the Consolidated Stores Corporation in 1998, for having discriminated, and retaliated against the Plaintiff on the basis of his country of origin — Nigeria. Having presented such false claim, defense counsel contended for dismissal of

case, and Judge Albright, who failed to conduct "Findings of Fact" for that Hearing, ruled in favor of defendants, and dismissed this case with prejudice at that first Hearing on March 27, 2000, on the basis of violating Rule 41(b) of federal Rules of Civil Procedure. Prior to the false claim under oath by defense counsel, a court order of February 24, 97 issued by District Judge Tilley at Greensboro district court in a court review process of the Plaintiff's first federal action; the federal district court at Greensboro stated on pages 3 & 4 of its Memorandum Opinion, and Order that defense counsel contended that district court had no Subject Matter Jurisdiction over MS. Williams because there is no individual liability for an employee under Title VII; hence, the court concluded then, that Jorja Williams did not meet the definition of an employer; therefore, she couldn't be held individually, liable, & the case against her was dismissed. (See that Court Order as Plaintiff's Ex. #13.)

The above stated point proved that defense counsel Pappas & Moore were just playing "Double Standards" when they deceived 2 state court judges with their argument that Ms. Williams was a co-defendant in the Plaintiff's first federal action in 1998. Whereas, the same defense counsel, Pappas & Moore listed William as one of defense witnesses for Consolidated Stores Corporation on defense Final Pre-Trial Disclosures filed on March 16, 1998, in U.S. District Court at Greensboro, before the Trial in which the Judgment for that Civil Rights Case was entered commenced. (See a copy of that defense witness list attached as Ex. #14.) The above stated facts proved that Jorja Williams couldn't have been both a co-defendant, and a defense witness in same action.

Judge Albright, who presided over the first Hearing of this case failed to conduct the Findings of Fact in this case before he entered unjust judgment that Plaintiff's complaint against defendants in this action violated Rules 12(b)(6), and 41(b) of Federal Rules and Civil Procedure. The judge would have discovered that Plaintiff's complaint did not violate Rule 41(b) due to the fact that the Rule of Law provides for the "Rule of "Mutuality" which refers to

the requirement of general proposition: that "Judgment can operate as 'Collateral Estoppel' only where all the parties to the proceeding in which the Judgment is relied upon were bound by the judgment. Whereas, Jorja Williams would not have been bound by that judgment if it was entered against the sole defendant, Consolidated Stores Corporation. So conceivably, a party to a "Multidefendant action may effectively have been dismissed from the case, or discontinued participation therein, before the judgment was entered; and then, he, or she is not a party to the judgment, although, he, or she was a party to the action". Therefore, Jorja Williams was not a co defendant when judgment was entered for Plaintiff's first federal Civil Right action, but she was a witness for defendant CSC.

The Plaintiff's complaint against defendants in this action is not barred by Rule 12(b)(6) of Federal Rules of Civil Procedure as claimed by defense counsel Pappas, & Moore because Rule 12(b)(6) provides for an exception of any dismissal based on a violation of Rule 12(b)(6). Such as where the face of complaint discloses some "Insurmountable Bar to Recovery", as in this case. In support to the above stipulation, the United States Supreme Court also, enunciated a Rule which "suspends" the running of an applicable Statute of Limitations that may be imposed upon a case with insurmountable bar to recovery until such good cause is in order, or met before the running of the imposed Statute of Limitations is lifted to start running again. (See copy of excerpt on which such Rule is succinctly explained as Plaintiff's Ex. #15, and another copy of excerpt which explains about the exception embedded in Rule 12(b)(6) that allows for suspension of running of statute of limitations when good cause arises, as Pl. Ex. #16.)

In a case in sight which the U.S. Supreme Court used to show the kind of good causes that can suspend, or toll the applicable statute of limitations was American Pipe & Construction Co. v. Utah, 44 U.S. 538, 94 S.Ct. 756. 38 L. Ed. 2d 713 (1974) there was no knowledge of who the "would be" members of Class Parties might be; just as in

this case when there was no knowledge of who the "would be" defendants of this action were until several years after the offense was committed. Or whether it could be allowed to proceed as a class action. At that point, the running of the statute of limitation was suspended during the pendency of the undetermined class action & the "would be" members of class parties. The above cited case was in contrast with my case when my employer deliberately, refused to disclose to me who my false accusers were until five years later, after my discharge from my job because of those false allegations, the U.S. district court at Greensboro forced my employer to disclose to me the correct names and addresses of my false accusers. (See the copy of that disclosure, and date the disclosure was made, as Pl. Ex. #17.) This means that the applicable statute of limitations for filing suit of this case started running from the date that disclosure of the names, and addresses of defendants in this case was filed because no court of law in the United States would have allowed any case to be filed without disclosing the correct names and addresses of defendants on that suit. Hence it would be violation of Rules 12(b)(4), and 12(b)(5) of Federal Rules of Civil Procedure.

Also, there is evidence of concerted efforts made by defense counsel, and the Plaintiff's former employer to withhold disclosing defendants in this action when they committed the offense that they are charged for. See the copy of Motion for Protective Order that defense counsel Peter Pappas filed in district court at Greensboro on March 6, 1998, and its Brief asking for authorization to continue withholding identities of these defendants from the Plaintiff when they were posing as defense witnesses as Plaintiff's Exhibit #17B.) A concerted effort from Plaintiff's employer to withhold the identities of his false accusers from him was shown on the copy of Affidavit procured by CSC' s agent who consulted with the Plaintiff, and questioned him about those allegations in 1993. On page 3 of her Affidavit filed on January of 98, at district court she confirmed that she deliberately refused to disclose the names and addresses of my false accusers when I

demanded such information from her. The Affidavit is as Plaintiff's Exhibit #18, attached to this Writ of Certiorari.

Another important evidence labeled here as Plaintiff's Ex. 18B which shows another concerted effort by Consolidated Stores to withhold the identities of these defendants from the Plaintiff is a copy of transcript testimony given by the store manager of Big Lots Store #266 at Greensboro, where the Plaintiff worked last before he was discharged on September 15, 1994. On page 15 of the excerpt copy of that transcript testimony taken at the Employment Security Commission of North Carolina in Greensboro, the store manager, Mr. Bill Hartnagle confirmed that he didn't disclose the identities of these defendants to Plaintiff when he discharged Plaintiff from Big Lots Store #266 based on these allegations raised against him by these defendants. So, if the Plaintiff did not know that these defendants had falsely, accused him of the charges against them while he was still working at Big Lots Store #266; and was not told who falsely accused him when he was discharged from his job based on those allegations, how could he have threatened these defendants as alleged by defense counsel when Plaintiff was still not aware that these defendants had accused him of these things they are charged for? Also, how could have Plaintiff filed the suit of this case within 1 year of the applicable statute of limitation if no court of law would accept to file any case that has no names and address of its defendants correctly filled out? The Plaintiff filed the suit of this action within 1 year from the date defense counsel disclosed the names and addresses of the defendants on the order of the federal district court at Greensboro. Therefore, the complaint against these defendants is not barred by Rule 12(b)(6) of Federal Rules and Civil Procedures as claimed by defendants.

Had the names and addresses of these defendants been disclosed to the Plaintiff as he requested, and requested from CSC's officials who investigated on those allegations raised against Plaintiff by defendants in this action, and used as pretext by CSC to discharge him from his job at Big Lots Store, the Plaintiff would have filed the suit of this case within 1 year statute of limitation from

the date the false allegations were raised against him. Such denials from the Plaintiff's former employer was good cause that suspended the running of the 1 year Statute of Limitations for filing of this case until defense counsel Pappas made that disclosure on March 16,1998, on the order of district court.

The U. S. District Court for the Middle District of North Carolina, at Greensboro declined to hear this case on the basis of lack of Subject Matter Jurisdiction over this case, and affirmed the state court orders entered against this case at the two Hearings that were unconstitutionally, presided by superior court judges who misapplied the Rules of Law raised in this action. The U. S. District Court erred in granting defendants dismissal of this action based on false claims presented to it by defense counsel, and the contents of the flawed judgments entered at the state Hearings of this action presided over by superior court judges who failed to conduct Findings of Fact before entering their judgments on case that had claim of violation of Rule 12(b)(6) of federal/state Rules of Civil Procedures. The Rule of Law provides that federal district courts all over the States do have exclusive Rights/Power invested on them by the Constitution to hear, and try cases which involve Title 28, U.S.C. §§ 1331, & 1332; and Title 42, U.S.CS §§§ 1983, 1985, and 1988, as amended This case has the above qualities, and more to be heard by a Federal Court.

The 3 requisites of Rule of Law that are found in this action which override the district court's claim of lack of Subject Matter Jurisdiction over this case are: FEDERAL GENERAL QUESTION found under Title 28, U.S.C. § 1331 (Pl. Ex. #19). DIVERSITY OF CITIZENSHIPS between members of both parties found under Title 28, U.S.C. § 1332 as amended (Pl. Ex. #20); and also, FEDERAL CLAIM OF PENDENT JURISDICTION found under Title 42, USCS §§ 1985, & 1988, as amended; 42, U.S.C. § 1983 also, as amended. (Ex. #20-B.)

The above stated doctrines are found in the Plaintiff's complaint against defendants in this action. The Plaintiff stated from line 3 of first paragraph of his charges against

defendants that this Civil Action arose under the Constitution of the United States which is found under Title 28, U.S .C.§§§ 1331, and 1332, 1441, as amended. This Title confers Jurisdiction exclusively to all federal district courts in the States, and commonly known as General Federal Question based on Jurisdictional Grant, Diversity of Citizenships between both parties, and Fraudulent Abuse of the Rule of Law.

The Rule of Law provides Constitutional Rights to protest all kinds of Discriminations, and Retaliations from employments and public places in the United States. The Plaintiff's Civil Rights were fraudulently abused by defendants in this action through conspiracy, and interference with false allegations against Plaintiff , and his former employer, CSC used those false allegations as pretext to discharge him from his job at Big Lots Store #266. Defendants in this action conspired with CSC's officials, and raised false allegations against Plaintiff which his former employer, the CSC used as pretext to discharge Plaintiff from his job as he was protesting discriminations from his employer.

Also, on line 2 of the second paragraph of same page 1, the Plaintiff had stated that the matters in controversy in this action emerged from the prior parent case referred to as Plaintiff's first federal action and labeled Case #2:95 CV00826. A Conspiracy to Obstruct Justice from being served in that 1st federal action, and to interfere with the Plaintiff's Civil Rights under color of state law are federal claims, and are actionable under federal law in any federal district court all over the states in America, pursuant to Title 42, USC § 1983, as amended (Pl. Ex. #21). Also, pursuant to same Title 42, but USCS §§ 1985, & 1988, this action belongs to federal district court, but not to state court (Pl. Ex. #21).

Defendants' false allegations against the Plaintiff were used as mere platform to interfere with Plaintiff's Civil Rights that included his Constitutionally protected Rights to protest against discriminatory treatments from his former employer, the CSC between 1993, and 1994. Before the Interference occurred, there was conspiracy

first, between defendants and the CSC's Officials (Pl. Ex. #22), and a second conspiracy among defendants themselves (See the Plaintiff Notice of Appeal of April 16, 2000, filed in U.S. District Court (Pl. Ex. #23).

The point is that those false allegations against Plaintiff were intentionally raised when he was exercising his Constitutional Rights in his protest against unlawful employment practices that he received from his former employer, the Consolidated Stores Corporation which used those false allegations from these defendants as pretext to discharge Plaintiff from his job for having started protesting all the CSC's discriminations, & retaliations toward him. This violation qualifies for Pendent Jurisdiction by U.S. District Court against these defendants. (Ex. #21.)

CONCLUSION

In light of all that have been stated in this Writ of Certiorari, it is apparently clear and correct to affirm the Plaintiff's argument that the federal district court at Greensboro, in North Carolina had the power to exercise Pendent Jurisdiction over the Plaintiff's Claims that he was discharged from his former job at Big Lots Store, in Greensboro, based on defendants' false allegations which interfered with the Plaintiff's Civil Rights which he was exercising in his protests against his former employer's "unlawful employment practices" toward him, but the District Court failed to do so. Also, that Defendants in the instant action conspired with the Plaintiff's former employer's officials, and interfered with the Plaintiff's Civil Rights when his false accusers, who are also, defendants in the instant case raised false allegations against him at the time he was protesting discriminations, and retaliation from his former employer, purposely to stop his protests.

That the State Court had no Jurisdictions over the Federal Claims which it presided over its Hearings unconstitutionally, and without Statutory power pursuant to Title 28, USC §§ 1331, & 1332 as amended; Title 42, USC

§ 1983, and USCS §§ 1985, & 1988 as amended. In addition to the above quoted/referenced Rules of Law, without legal authority, the defense counsel, Pappas, & Moore filed two motions that transferred this case from one state court to another in the same state where those non-binding unjust judgments were entered against this case on which the district court relied upon when the federal judges that reviewed this case formed their biased opinions, and order for this case. Two Wrongs Can not make a Right! Therefore, state's flawed orders can not, and should not have been the basis of evaluating the U. S. District Court's Jurisdiction over this action because the State Court & the defense counsel for defendants in this action violated the Rules of Law guiding this case on several occasions in their determinations to transfer this case to their desired court which assigned judges that circumvented some Rules of Law guiding this case to preside over unnecessary Hearings, and enter those unjust court orders against this case.

The transfer of this case to Superior court was wrong because there was no Statutory Avenue that allowed such transfer. Presiding over the two state court's Hearing of this case was not right because the doctrines of Title 28, USC §§ 1331, & 1332; and Title 42, USC § 1983, & USCS §§ 1985, & 1988, as amended barred the State Superior Court from holding such Hearings in this case. During the proceedings of those unnecessary Hearings, the judges circumvented the doctrines of some Rules of Law that required reversal court order from the State Court of Appeals before presiding over a second Hearing of this case which its first Hearing was dismissed unjustly with prejudice.

The Plaintiff's Fourteenth Amendment Rights was violated also, when a superior court judge allowed defense counsel Pappas to write a court order for one of the Hearings he participated in its argument as defense counsel; and the judge signed such into judgment for that Hearing which was in favor of the defense party. Finally, the superior court judges departed far away from the usual proceedings of judicial system in their application of law

which the district court judges affirmed, and Court of Appeals sanctioned. May this highest court of the land rectify them. The Plaintiff has a winnable case which deserves to be tried.

REASONS FOR GRANTING THE PETITION

1.) The "Prevalence" of "Justice" in this Action is very much at risk, but only an exercise of Supreme Court's supervisory power can rectify the hindrance/suppression of Justice in this case by the defense counsel and judges with "Bias, and Malice".

2.) The "Rules of Law" have been violated by both defense party and the state court judges, and such violations call for a close look into the "Checks, and Balances" of the Judicial System that control the proceedings of Civil Cases, such as this Action.

3.) The state court judges have circumvented the doctrines of some Rules of Law that are present in this case; and have also, departed from the accepted and usual course of Judicial System.

4.) The Plaintiff's Fourteenth Amendment Rights as amended by the Constitution was denied him on two occasions during the state Hearing Proceedings, and district court's Review Precess of this Action.

5.) The Plaintiff's complaint against defendants in this action does not violate any of Rules 12(b)(6), and 41(b) of the federal and state Rules of Civil Procedure as defense counsel, Pappas & Moore falsely claimed under oath in their Double Standard Games.

6.) The Plaintiff has a "Winnable Case", and deserves not only to be heard by a competent court of law that is exclusively, authorized to hear this case, but also, be given an opportunity to present this case in a Trial Court with duly

selected members of the Jury which will be allowed to hear this case with the evidence that will be presented to them for their deliberation and unanimous verdict in favor of any winning party.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

this the 8th day of March, 2002.

Christopher J. Ohiakemelu

Date: 3/08/02.

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

CHRISTOPHER J. ODINKEMELU — PETITIONER
(Your Name)

VS.

JORJA WILLIAMS, MYRTLE FOUST, KAREN JONES
VERONICA MCLEAN , & ALICIA RESENDIZ
— RESPONDENT(S)

PROOF OF SERVICE

I, CHRISTOPHER J. ODINKEMELU, do swear or declare that on this date, 31ST DAY OF MARCH, 2002, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

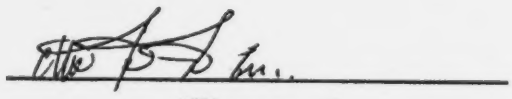
PETER PAPPAS & ET (DEFENSE COUNSEL FOR DEFENDANTS IN THIS ACTION)
POST OFFICE BOX 3463, GREENSBORO, NC 27402.

UNITED STATES COURT OF APPEALS, FOR THE FOURTH CIRCUIT,

#1100 EAST MAIN STREET, SUITE 501 RICHMOND, VIRGINIA, 23219.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on MARCH 8, 2002.



(Signature)

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UNITED STATES COURT OF APPEALS' UNPUBLISHED COURT ORDER #01-1594

APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 01-1594

CHRISTOPHER J. ODINKEMELU,

Plaintiff - Appellant,

versus

JORJA WILLIAMS; MYRTLE FOUST; VERONICA MCLEAN; KAREN JONES; ALICIA OAKLEY RESENDIZ,

Defendants - Appellees.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. James A. Beaty, Jr., District Judge. (CA-0O-750-l)

Submitted: September 20, 2001
Decided: September 26, 2001

Before LUTTIG, KING, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Christopher J. Odinkemelu, Appellant Pro Se. Peter George Pappas, Brian Stephen Clarke, ADAMS, KLEEMEIER, HAGAN, HANNAH & FOUTS, Greensboro, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Christopher J. Odinkemelu appeals the district court's order dismissing his civil complaint. We have reviewed the record and the district court's opinion accepting the recommendation of the magistrate judge and find no reversible error. Accordingly, we affirm on the reasoning of the district court. See Odinkemelu v. Williams, No. CA-00-750-1 (M.D.N.C. Apr. 3, 2001). Defendants' motion for sanctions is granted, and Defendants are awarded reasonable costs and attorneys' fees. In addition, we enjoin Odinkemelu from filing any further civil actions in this court until such time as these monetary sanctions are paid, and unless a district court judge certifies that his claim is not frivolous. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

PLAINTIFF'S APPEAL FILED FOR THAT COURT ORDER

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 01-1594

CHRISTOPHER J. ODINKEMELU
Plaintiff/Appellant
v.

JORJA WILLIAMS, MYRTLE FOUST,
VERONICA MCLEAN, KAREN JONES,
and ALICIA OAKLEY RESENDIZ
Defendants /Appellees.

NOTICE OF APPEAL TO SUPREME COURT OF U.S.

With references to the Court Of Appeals Judgment/Order of September 26, 2001, and the Appellees' attorney-fee filed against the Appellant in this action, the Plaintiff, Christopher Odinkemelu respectfully, submits this response, and strongly opposes the Judgment that United States Court Of Appeals For The Fourth Circuit entered for this action because of the following reasons:

1.) There is no "Justice" found in the Judgment that Court of Appeals entered on September 26, 2001, for this action.
2.) Court of Appeals Judges failed to consider the "Rules of Law" that defense party violated in this case while judges formulated their opinions for this unjust Judgment.
3.) Plaintiff/Appellant has a winnable case against the Appellees, but Court Of Appeals failed in its duty to uphold the overwhelmingly prevailing Justice for the Plaintiff in this action. Hence, The Appellant is appealing the Court Of Appeals' ruling in this case to Supreme Court of the United States to bring defen-

dants in this action to "Justice"

4.) Therefore, the Plaintiff is not responsible for any attorney's fee that defense party filed against him on a pending case.

Respectfully, submitted this the 14th day of October, 2001.

CHRISTOPHER J. ODINKEMELU
PRO-SE PLAINTIFF
(336) 886-8726.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copy of the foregoing NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES was duly served upon the Appellees' attorney in accordance with the provisions of Rule 5 of the Federal Rules of Civil Procedure, by depositing it in the United States Mail, first class postage prepaid, addressed to their counsel as follows:

Peter G. Pappas & Et.
Post Office Box 3463
Greensboro, NC 27402.

Christopher J Odinkemelu
307-B West Ward Avenue
High Point, NC 27260.

U. S. DISTRICT COURT ORDER #1:00CV750

APPENDIX B

PL. EX. #7

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

CHRISTOPHER J. ODINKEMELU,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**1:00CV00750**
	)	
JORJA WILLIAMS,	)	
MYRTLE FOUST,	)	
VERONICA McLEAN,	)	
KAREN JONES, and	)	
ALICIA OAKLEY RESENDIZ,	)	
	)	
Defendants.	)	

O-R-D-E-R

On January 5, 2001, in accordance with 28 U.S.C. § 636(b), the Recommendation of the United States Magistrate Judge was filed and notice was served on the parties in this action and a copy was given to the court.

Within the time limitation set forth in the statute, Plaintiff objected to the Recommendation.

The court has appropriately reviewed the portions of the Magistrate Judge's report to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's report. The court therefore adopts the Magistrate Judge's recommendation.

IT IS THEREFORE ORDERED that Defendants Williams and Foust's motion to dismiss [Pleading no.7] be **GRANTED,** that Plaintiff's motion for sanctions [Pleading

no. 13] be **DENIED,** that Defendants Williams and Foust's motion for sanctions [Pleading no. 10] be GRANTED, and that this action be dismissed in its entirety. With regard to the grant of sanctions, Defendants Williams and Foust shall file an affidavit of attorney's fees within 20 days of this Order.

IT IS FURTHER ORDERED, for reasons set forth in the Magistrate Judge's Recommendation, that Plaintiff be ENJOINED from filing additional complaints against the Defendants named herein without prior leave of court.

IT IS FURTHER ORDERED that Plaintiff's motion to strike Defendants' response to his objections to the Magistrate Judge's Recommendation [Pleading no. 24] be **DENIED** since Defendants' response was timely in view of Federal Rules of Civil Procedure 72(b) and 6(a). Plaintiff's "Objection" filed February 28 is **STRICKEN** since it is not permitted by Federal Rule 72 or any other rule of court.

A judgment dismissing this action will be entered contemporaneously with this Order.

s/James A. Beaty
United States District Judge

April 3, 2001

U. S. DISTRICT COURT JUDGMENT #1:00CV750

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA

CHRISTOPHER J. ODINKEMELU,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**1:00CV00750**
	)	
JORJA WILLIAMS,	)	
MYRTLE FOUST,	)	
VERONICA McLEAN,	)	
KAREN JONES, and	)	
ALICIA OAKLEY RESENDIZ,	)	
	)	
Defendants.	)	

J-U-D-G-M-E-N-T

For the reasons set forth in the Order filed contemporaneously with this Judgment,

IT IS HEREBY ORDERED AND ADJUDGED that Defendants Williams and Foust's motion to dismiss [Pleading no. 7] be **GRANTED,** that Plaintiffs motion for sanctions [Pleading no. 13] be **DENIED,** that Defendants Williams and Foust's motion for sanctions [Pleading no. 101 be **GRANTED,** and that this action be, and is hereby, dismissed in its entirety.

IT IS FURTHER ORDERED that Plaintiff be ENJOINED from filing additional complaints against the Defendants named herein without prior leave of court.

s/James A. Beaty
United States District Judge

April 3, 2001

RECOMMENDATIONS BY
U. S. MAGISTRATE JUDGE #1:00CV750

APPENDIX C

PL. EX. #6

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA

CHRISTOPHER J. ODINKEMELU,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**1:00CV750**
	)	
JORJA WILLIAMS, MYRTLE FOUST, VERONICA MCLEAN, KAREN JONES, and ALICIA OAKLEY RESENDIZ,	)	
	)	
Defendants.	)	

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This matter is before the court on the motion to dismiss, [P1. no. 7], filed by Defendants Jorja Williams and Myrtle Foust pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), 12(b)(5), and 12(b)(6), and Defendants' motion for sanctions, [P1. no. 10], filed pursuant to Federal Rule of Civil Procedure 11 and Local Rule 7.3(a). In addition, Plaintiff Christopher Odinkemelu, proceeding ***pro Se,*** has filed a motion for sanctions, [P1. no. I 3}, against attorneys Peter Pappas and Larry Moore and his former employer Consolidated Stores Corporation, pursuant to Local Rule *83.* 11(a). For the reasons set forth

below, the court finds that Defendants' motion to dismiss and motion for sanctions should be granted, and Plaintiff's motion for sanctions should be denied.[1]

FACTS

A full understanding of the history surrounding Plaintiffs dispute with Defendants and his former employer, Consolidated Stores Corporation ("Consolidated"), is critical for a proper adjudication of the motions presently before the court.

In support of its motion for summary judgment filed in the prior federal action, Consolidated submitted several affidavits. These affidavits, filed by Williams, Foust, McLean, Jones, and Resendiz, defendants in the current case, recounted Plaintiffs allegedly inappropriate and threatening behavior.[2] Based upon the evidence presented at summary judgment, the court granted Williams' motion to dismiss and Consolidated's motion for summary judgment in part. The action proceeded to trial on April 30, 1998, and at the close of Plaintiff's evidence, the Honorable James A. Beaty, Jr., judge presiding, granted Consolidated's motion for judgment as a matter of law pursuant to Rule 50 of the Federal Rules of Civil Procedure. By order dated May 5, 1998, Judge Beaty entered judgment for Consolidated and dismissed Plaintiff's federal action.

Plaintiff appealed Judge Beaty's ruling to the Fourth Circuit, and on November 16, 1998, the circuit court affirmed the ruling. Plaintiff petitioned the Fourth Circuit for rehearing, however, the petition was denied on December 29, 1998. Thereafter, Plaintiff sought review by the

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[1]Defendants McLean, Jones, and Resendiz have not appeared in this action and have apparently not been served with process.

[2] Defendants Williams, Foust, and McLean were Consolidated employees, and Defendant Jones and Resendiz were customers at Consolidated's "Big Lots" store located in Greensboro, North Carolina.

United States Supreme Court, but his petition for certiorari was denied by the Court on May 24, 1999. *Odinkemelu v. Consolidated Stores Corp.*, 526 U.S. 1136 (1999).[3]

On December 1, 1999, Plaintiff filed a civil action in the General Court of Justice. Guilford County, North Carolina, against Williams, Foust, Jones, McLean, and Resendiz. In this state action. Plaintiff asserted claims for perjury, conspiracy to commit perjury, subornation of perjury, and defamation based primarily on the affidavit statements of Defendants filed in the previous federal action. Defendants Williams, Jones, and Foust moved to transfer the state action to the Superior Court Division and further moved to dismiss Plaintiff's claims pursuant to several legal theories. Namely, Defendants argued that Plaintiff's claims were not valid causes of action under state law, were barred by the statute of limitations, and should be dismissed in accordance with the doctrines of res judicata and collateral estoppel.

On March 27, 2000, oral argument on Defendants Williams, Jones, and Foust's motions to transfer and to dismiss was heard before the Honorable W. Douglas Albright, Superior Court Judge presiding. After hearing the arguments of Plaintiff and Defendants' counsel, Judge Albright granted the motion to transfer and further dismissed Plaintiffs claims with prejudice. In so doing, Judge Albright held that Plaintiffs claims for perjury, subornation of perjury, conspiracy to commit perjury, and defamation based on affidavit statements were not actionable under North Carolina law.

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[3]Following the filing of his petition for certiorari but prior to the petition being denied by the Court, Plaintiff attempted to file with the Fourth Circuit a self-styled "indictment" against the named defendants in the case at bar. Plaintiffs document purported to indict the defendants on charges of perjury and obstruction of justice for allegedly making false statements in the affidavits previously filed in federal court. By letter dated December 29, 1998, the Clerk of the Fourth Circuit returned the "indictment" to Plaintiff, stating that it was without authority to issue such a document. Undeterred, Plaintiff attempted to file a second "indictment" with this court on January 17, 1999. His request was, of course, denied.

On April 20, 2000, Plaintiff filed a notice of appeal of Judge Albright's order. However, approximately one month later, Plaintiff filed a motion to withdraw the notice of appeal.

In an Order dated August 23, 2000, Judge Greeson granted Defendants' motion to dismiss and motion for sanctions. Judge Greeson concluded that in addition to being barred by clearly established law, Plaintiff's second action was subject to dismissal based on the doctrines of res judicata and collateral estoppel. In addition, Judge Greeson found that, in bringing the second state action, Plaintiff violated Rule I 1 of the North Carolina Rules of Civil Procedure. As a sanction, Judge Greeson ordered that Plaintiff be henceforth prohibited from filing any further actions, causes of action, claims, charges, or demands in the General Court of Justice, Guilford County, North Carolina, against any of the defendants herein on any claim, issue, or matter which was brought or raised in [either the first or second state action], or any actions, causes of action, claims, charges, or demands based on any claim, issue or matter within the scope of [either the first or second state action] which Plaintiff, in the exercise of reasonable diligence, could and should have brought forward for determination." (Def.'s Brief in Support of Motion to Dismiss, Exh. I at 4.)

Subsequent to Judge Greeson's Order [LIE! See both dates of filing on pp. 4 and 5 of this partial Recomm. for Revenge!], Plaintiff filed the instant action in this court on August 11, 2000, asserting claims for falsification of evidence and defamation.

DISCUSSION

I. Motion to Dismiss

A. Lack of Subject Matter Jurisdiction

Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, a party' may move to dismiss a complaint for "lack of jurisdiction over the subject matter." Fed. R. Civ.

Pro. 12(b)(1). In the present case, Defendants Williams and Foust have so moved, contending that Plaintiff has failed to establish the presence of either diversity or federal question jurisdiction. For the reasons set forth below, the court finds that Defendants' motion is well-taken

Section 1332 of Title 28 confers subject matter jurisdiction upon federal courts over civil actions in which "the matter in controversy exceeds the sum or value of S75,000, exclusive of interest and costs" and when the action is between "citizens of different States." 28 U.S.C. § 1332(a)(1). If a plaintiff fails to establish either of these two statutory requirements, a federal court may not retain jurisdiction over the matter, and absent a federal question,

Although a civil action may not satisfy the requirements of Section 1332, a federal court may still maintain jurisdiction of a claim if the action "arises under" federal law. 28 U.S.C. § 1331. It is said that a claim "arises under" federal law when either the Constitution, laws, or treaties of the United States creates the cause of action. *City Nat'l Bank v. Edmisten,* 681 F.2d 942 (4th Cir. 1982).

In Plaintiff's first action before the state court, Judge Albright issued an order on March 27, 2000, dismissing his complaint for failure to state a claim upon which relief could be granted. Judge Albright's dismissal operates as a final adjudication on the merits of Plaintiff's claims in the

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[4]Statements made in Plaintiffs brief filed in response to Defendants' motion to dismiss further support this finding. Notably, Plaintiff states that he "is a dual citizen of Nigeria/America and residing permanently in North Carolina. The first defendant, Jorja Williams is a resident of Georgia, while the rest 4 [one] defendant have their residence in North Carolina." (Pl.'s Brief at 3.) [See pp. 1 and 2 for facts on footnotes!]

[5]Defendants' Affidavits were filled in defense of the prior civil action on January 9, 1998.

[6]Plaintiff contends that the statute of limitations should have been tolled during the period in which he was unable to locate and/or verify Defendants' addresses. Plaintiff has cited no legal support for his "tolling" argument, and the court finds that it is without merit.

first state action. *See Dawson v. Allstate Ins. Co.,* 106 N.C. App. 691, 692, 417 S.E.2d 841, 842 (1992) (noting that "[u]nless the court in its order for dismissal otherwise specifies, a dismissal for failure to state a claim operates as an adjudication upon the merits"). Moreover, this prior state action involved not only the same plaintiff and same defendants as are involved herein, but the previous litigation also centered around the very same facts, issues, and claims that are presented in Plaintiff s current complaint before this court.

In addition, in Plaintiff's second action filed in state court, Judge Greeson found that all of Plaintiff's claims were barred by the doctrines of res judicata and collateral estoppel based on Judge Albright's previous ruling. In consideration of these two prior state actions, and pursuant to North Carolina law, this court finds that Plaintiff is estopped from pursuing the present litigation. As the North Carolina courts have explained, the companion doctrines of res judicata and collateral estoppel serve "the dual purposes of protecting litigants from the burden of relitigating previously decided matters and promoting judicial economy by preventing needless litigation." *Little,* 134 N.C. App. at 487, 517 S.E.2d at 902 (citation omitted). This case presents a fitting example of when and how those purposes can be dually served.

CONCLUSION

For the reasons stated herein, **IT IS RECOMMENDED** that Defendants Williams and Foust's Motion to Dismiss, [P1. no. 7], be granted, and that Plaintiff Odinkemelu's Motion for Sanctions, [P1. no. 13], be denied. In addition, **IT IS FURTHER RECOMMENDED** that Defendants Williams and Fousts' Motion for Sanctions, [P1. no. 10], be granted, and that Plaintiff be charged with Defendants' costs and attorney's fees and be enjoined from filing additional complaints against the defendants named herein without prior leave of court. Although Defendants McLean, Jones, and Resendiz have not appeared in this

action, Plaintiffs complaint should be dismissed in its entirety against all named Defendants since it is apparent the court lacks subject matter jurisdiction over the claims attempted by Plaintiff.

s/P. Trevor Sharp
P. Trevor Sharp, U.S. Magistrate Judge

January 5, 2001

DEFENSE CLAIMS #1:00CV750

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION
Civil Action No. I :00CV00750

CHRISTOPHER J. ODINKEMELU, Plaintiff, v. JORJA WILLIAMS, MYRTLE FOUST, VERONICA MCLEAN, KAREN JONES, and ALICIA OAKLEY RESENDIZ Defendants.	)	**BRIEF IN SUPPORT OF DEFENDANTS WILLIAMS AND FOUST'S MOTION TO DISMISS**

Defendants Jorja Williams ("Williams") and Myrtle Foust ("Foust"), by and through undersigned counsel and pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(5) and 12(b)(6) of the Federal Rules of Civil Procedure and Local Rule 7.3(a) of the Rules of Practice and Procedure of the United States District Court for the Middle District of North Carolina, hereby respectfully submit this Brief in Support of their Motion to Dismiss.

NATURE OF THE MATTER

Plaintiff Christopher J. Odinkemelu, appearing pro *Se,* filed the captioned action on August 11, 2000. In his Complaint, Plaintiff attempts to assert claims for relief for, *inter alia,* perjury and defamation. For the reasons discussed, *infra,* Plaintiffs Complaint should be dismissed.

STATEMENT OF FACTS

The factual allegations contained in Plaintiffs Complaint are basically (1) that he was an employee of Consolidated Stores Corporation ("CSC") (Complaint p. 2); (2) that

he was terminated based, in part, on the complaints of several CSC employees and customers (Complaint pp. 2-4); (3) that he filed a civil action in this Court, "case #2:95 CV 00826," against CSC following his termination (Complaint p. 1); and (4) that the named Defendants herein allegedly made false statements in affidavits they submitted in conjunction with "case #2:95 CV 00826. (Complaint p. 1). A more complete understanding of the facts and history of this dispute is necessary to determine the issues in this Motion.

Defendants Williams, Jones and Foust[3] moved to dismiss Plaintiff's claims pursuant to Rules 12(b)(6) and 4 1(b), of the North Carolina Rules of Civil Procedure, the statute of limitations found in N.C. Gen. Stat. § 1-54(3), and the doctrines of res judicata and collateral estoppel. (Ex. B). These defendants argued that clearly established North Carolina law barred all of Plaintiff's claims. On March 27, 2000, Defendants Williams, Jones and Foust's motions to dismiss came on to be heard before Senior Resident Superior Court Judge W. Douglas Albright. After hearing the arguments of Plaintiff and counsel for defendants, Judge Albright granted the Motions to Dismiss and dismissed the First State Action, with prejudice. (Ex. C).

Despite the fact that his claims were barred by clearly established North Carolina law, Plaintiff filed a timely Notice of Appeal of Judge Albright's March 27, 2000 Order. (Ex. D). Rather than pursue this baseless appeal, however, Plaintiff filed a motion to withdraw his Notice of Appeal and a request to get back some documents he filed with the clerk in opposition to the defendants' motions to dismiss. (Ex. E). These motions came on to be heard before Superior Court Judge Judson D. DeRamus, Jr. on June 26, 2000. After hearing the arguments of Plaintiff and counsel for defendants, Judge DeRamus allowed Plaintiff's motion to withdraw his Notice of Appeal and dismissed Plaintiff's appeal with prejudice. (Ex. F).

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[3]McLean and Resendiz were never served with process in the First State Action.

On May 19, 2000, Plaintiff filed a second action in the General Court of Justice of Guilford County, North Carolina, against Williams, Foust, Jones, McLean and Resendiz. This action was entitled Odinkemelu v. Williams, et al., No. 00 CvS 1337 (the **"Second State Action").** In the Second State Action, Plaintiff attempted to assert the exact same claims that he sought to assert in his First State Action. (Ex. G). Plaintiff's claims in the Second State Action were clearly barred by the doctrines of res judicata and collateral estoppel and were otherwise utterly without merit. (See Ex. G). On August 21,2000, Superior Court Judge Howard R. Greeson heard defendants Williams and Foust[4] motions to dismiss and motion for sanctions in the Second State Action. (See Ex. H). After hearing the oral arguments of the parties, Judge Greeson granted the motions to dismiss the Second State Action based on the doctrines of res judicata and collateral estoppel. (See Ex. I).

Judge Greeson also granted Williams and Foust's motion for sanctions. In his Order, dated August 23, 2000, Judge Greeson found that the Second State Action was neither well grounded in fact nor warranted by existing law or any good faith argument for the extension, modification or reversal of existing law; that the Complaint in the Second State Action, as well as each and every claim therein, was barred by clearly established law; and concluded that Plaintiff had violated Rule 11 of the North Carolina Rules of Civil Procedure in bringing the Second State Action. (Ex. I). As an appropriate sanction for Plaintiff's egregious violation of Rule 11, Judge Greeson prohibited Plaintiff from filing any further actions, causes of action, claims, charges, or demands in the General Court of Justice, Guilford County, North Carolina, against any of the defendants in the Second State Action on any claim, issue or matter which was brought or raised in either the First State Action or the Second State Action, or

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[4]Jones, McLean and Resendiz were never served with process in the Second State Action.

any actions, causes of action, claims, charges, or demands based on any claim, issue or matter within the scope of either the First State Action or the Second State Action which Plaintiff, in the exercise of reasonable diligence, could and should have brought forward for determination. (Id.).

B. Plaintiff's Claims Are Barred by the Doctrines of Res Judicata and Collateral Estoppel

Plaintiff's claims in the instant action are barred by the doctrines of res judicata and collateral estoppel, in that Plaintiff made identical claims against these same defendants in the First State Action. The First State Action was dismissed pursuant to North Carolina Rule of Civil Procedure ~ 12(b)(6) on March 27, 2000.

R. Civ. P. 4(e)(1). According , this Court must look to North Carolina law to determine if service of process was sufficient in this case. North Carolina Rule of Civil Procedure 4(j)(l)(c) authorizes service of process "[b]y mailing a copy of the summons and of the complaint, *registered or certified mail, return receipt requested,* addressed to the party to be served, and delivering to the addressee." N.C. R. Civ. P. 4(j)(l)(c) (emphasis added). The North Carolina courts have consistently held that "where a statute provides for service of summons or notices in the progress of a cause by certain persons or by designated methods, the specified requirements must be complied with or there is no valid service." Guthrie v. Ray. 293 N.C. 67, 69, 235 S.E.2d 146, 148 (1977) (quoting S. Lowman v. Ballard & Co., 168 N.C. 16, 18, 84 S.E. 21, 22 (1915)). See also

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[9]Additionally, the limitations period for any alleged defamatory statements contained in the Affidavits expired on January 9, 1999, more than one year and eight months prior to the filing of the instant action on August 11, 2000. Accordingly, Plaintiffs claims for defamation based on allegedly defamatory statements made in the Affidavits are barred by the statute of limitations. See N.C. Gen. Stat. § 1-54(3). See footnote on p. 3 of Magistrate Judge's recomm. affirming that plaintiff tried on two instances to file this claim on Dec. 1998 and Jan. '99 but was denied.

Nissan Div. of Nissan Motor Corp. in U.S. v. Fred Anderson Nissan, 337 N.C. 424, 427, 445 S.E.2d 600, 602 (1994) (notice statutes must be strictly construed and service by Federal Express insufficient where statute required service by "registered or certified mail, return receipt requested").

Rule 4(j)(1)(c) clearly requires that service by mail be accomplished by "registered or certified mail, return receipt requested." Regular, first-class mail is not "registered or certified mail, return receipt requested." Plaintiff failed to comply with the requirements of state law and , thereby failed to comply with the service requirements of Federal Rule of Civil Procedure 4. Accordingly, Plaintiffs attempt to serve Williams and Foust by regular, first-class mail is insufficient as a matter of law and this action should be dismissed pursuant to Rules 12(b)(2) and 12(b)(5) of the Federal Rules of Civil Procedure.

CONCLUSION

Based on the foregoing, Defendants Williams and Foust respectfully request that Plaintiff's Complaint be dismissed with prejudice.

PLAINTIFF'S NOTICE OF APPEAL AGAINST RECOMM. & ORDER #1:CV750

PL. EX. #8

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

CIVIL CASE NUMBER 1:00CV00750

MR. CHRISTOPHER J. ODINKEMELU Plaintiff	)	
v.	)	
	)	"NOTICE OF APPEAL"
JORJA WILLIAMS, MYRTLE FOUST, VERONICA MCLEAN, KAREN JONES, and ALICIA OAKLEY RESENDIZ. Defendants	)	

PLEASE TAKE NOTICE that the plaintiff, Mr. Christopher J. Odinkemelu intends to file an appeal of the ruling entered for this case recently by the district judge designated to decide the Court's jurisdictional Power over Civil Case #1:00CV00750 based on the following reasons: - (Judge Beaty Interest in this case.)

1. That the Plaintiff's claims against defendants in this case are not barred by Rule 12(b)(6) as argued by defense counsel.
2. That the Plaintiff's claims are also, not barred by R.41(b).
3. That there is sufficient evidence the Amount of Relief in Controversy exceeds $10,000.00.
4. That there is legitimate evidence of Diversity of Citizen-ships among the members of both parties in the instant action.
5. That there were series of Discriminations and Retaliations against the Plaintiff by his former employer,

the CSC which he was vigorously protesting when CSC officials and defendants in this action (who were defense witnesses for CSC in Plaintiff's first federal action) conspired and interfered with Plaintiff's "Civil Rights" by raising false allegations used as pretext, used as pretext to discharge the Plaintiff from his job which automatically stopped the Plaintiff from continuing his Protests.

6. That there are enough "Facts & Evidence" of federal claim in the Plaintiff's complaints against defendants in the instant action as reiterated in this Notice of Appeal for court's review and necessary actions which include Reversal of the inappropriate ruling entered recently for this Civil Action before the close of time for Plaintiff to file his Appeal to United States Court of Appeals for the Fourth Circuit within thirty days from the date of filing of this Notice of Appeal.

EVIDENCE OF CONSPIRACY TO INTERFERE WITH PLAINTIFF'S CIVIL RIGHTS

When Jorja Williams discriminated against the Plaintiff on the basis of his country of origin—Nigeria, on May of 1993, by her refusal to let the Plaintiff move to his assigned Big Lots Store at Tampa Florida immediately the Plaintiff had completed the Big Lots Management Training at Big Lots Store in High Point he protested against the CSC's Management discrimination toward him. Also, when the Plaintiff protested against Jorja Williams' discrimination toward him, the CSC's Officials retaliated against the Plaintiff adversely in different ways.

While the CSC's Officials were implementing their retaliatory actions between June of 1993 and September 14, 1994, they carried out more discriminations toward the Plaintiff.

As the Plaintiff was protesting all the discriminatory and retaliatory treatments that he received from the CSC's Officials, one of the CSC's Officials, Jorja Williams vowed to fire him from his job at Big Lots Stores where he was employed as Asst. Manager for about twenty months

before he was finally discharged on Sept. 14, 1994, based on the alleged customer/employee complaints against the Plaintiff.

Before the Plaintiff's discharge from Big Lots Store #266, at Greensboro, NC, the CSC's Officials chose to use "Proffered Reasons" as pretext to discharge the Plaintiff from his job for his protests because they knew that Discharge of an employee "because he or she has opposed any practice made an unlawful employment practice by (Title VII)" violates section 704(a) of Title VII, 42 USC.§2000e-3(a). Hence, the CSC's Officials conspired with the defendants in this action to interfere with the Plaintiff's protests against his former employer's unlawful employment practices toward him by raising false allegations against the Plaintiff which the CSC's Officials turned to "Proffered Reasons", and used them as pretest for discharging the Plaintiff, thereby, stopped him from exercising his "Civil Rights " - (the right to protest discriminations).

1. The first conspiracy to interfere with the Plaintiff's protests against the CSC's Discriminations toward him took place between the CSC's Officials and two of the defendants in the instant action when Jorja Williams, acting as a CSC's Agent consented to a "Pre-Bargain" between her and the two defendants, Foust & McLean in the instant action, for which the defendants were assured that their identities would not be disclosed to the Plaintiff before they agreed to comply with the CSC's demand to make false complaint against the Plaintiff in writing about the first two episodes of sexual harassment levied against the Plaintiff by Foust & McLean on December 31, 1993, which the CSC's Officials planned to use as pretext to discharge the Plaintiff from his job at Big Lots. In the affidavit that Jorja Williams procured on January 5, 1998 as she was posing as the CSC's witness in the Plaintiff's first federal action against his former employer, the CSC, which was filed in the federal district court at Greensboro, on January, '98 by the CSC's counsel, Peter Pappas, Jorja Williams stated on page 9 of her affidavit on quote: "Ms. Foust and Ms. McLean requested that they should remain anonymous in their complaints against the Plaintiff, Mr.

Odinkemelu when they filed two complaints of sexual harassment against him". (See p. 9 of Jorja Williams Affidavit Session on January 9 in 1998.)

Such "conspiracy of pre-bargain" by CSC's Official/ Agent and two defendants in this action to conceal the identities of Plaintiff' 5 false accusers, who deliberately, raised false allegations against him on 12/31/93, primarily, to interfere with the Plaintiff's "Civil Rights" (the Right to Protest against Discriminations and Retaliations) violated Title 42 USCS. § 1985 which creates a private cause of action for conspiracy to interfere with the Plaintiff's Civil Rights. The CSC's consent to such a pre-bargain which protected only the identities of these defendants who falsely accused the Plaintiff, but failed to protect the Plaintiff's identity also, was a violation of the Plaintiff's "Fourteenth Amendment Right" (Equal Protection under the Law for US Citizens). The CSC's Policy could not have been made to protect only the accusers of offenses, without any protection for innocent/accused victims, like the Plaintiff in the instant action, Mr. Odinkemelu.

2. The second conspiracy to interfere with the Plaintiff's protests against his former employer's unlawful employment practices toward him took place between two defendants, Ms. Foust and Ms. McLean on or before December 31, 1993.

On the complaint that Ms. McLean wrote against the Plaintiff, and forwarded to the CSC's Regional Head Office at Georgia, she claimed that on December 17, 1993 while she went to the Bank with Plaintiff to deposit the CSC's daily sales' account, he said sexually harassing things to her; but she waited until 12/31/93 to file report. Also, Veronica McLean did not report to any CSC's Official on December 23, 1993 what she claimed that Plaintiff offered to her and requested from her on December 23, 1993 while she was at the Dollar Zone of Big Lots Store #266 at Greensboro, but she waited until December 31, 1993 to write her false complaint after Foust had collaborated with heron December 31, 1993 in support of her false allegation against the Plaintiff on December 31, 1993.

The contents of Foust's complaint and McLean' s

complaint against the Plaintiff showed that one false accuser was leading the other. In that case, it was Myrtle Foust that was leading Veronica McLean in their complaints of sexual harassment against the Plaintiff, in McLean's attempts to bolster Foust's allegation. In the Myrtle Foust's first complaint of sexual harassment against the Plaintiff on December 31, 1993, she claimed among other things that Plaintiff asked her on their way to the Bank one day saying:

"How do you kiss, by the lip, tongue, cheek, or by mouth? But Foust did not report that incident to any of the CSC's Officials until 3 weeks later when she claimed that the Plaintiff sexually harassed her again when he approached her one day at work and did ask her saying: "Why didn't you come to work on last Sunday? Did your friend dick you too hard, or did you over suck his dick?" If the Plaintiff ever said any of those things, why didn't Foust report to any CSC's Official what she claimed that the Plaintiff said to her? On December 24,1993 Myrtle Foust claimed again that she approached the Plaintiff on that date to say Merry Christmas, and Happy New Year ; and that when she approached him and asked him saying: "Where is my hug?", that the Plaintiff told her to suck his dick on the Christmas Eve at work in Big Lots Store #266. On the testimony that Foust gave at Employment Security Commission of North Carolina, in Greensboro on November of 1994, she said on page 28 of her testimony that she reported to a CSC's Official by name, Mr. John Briant, an Assistant Manager at Big Lots Store #266 immediately the Plaintiff made the sexual remark to her: but when she told Mr. John Briant what she claimed that the Plaintiff told her, the CSC's Official said "No!, Plaintiff didn't say that"; which mean that Mr. John Briant, or anybody else did not hear what Foust claimed that Plaintiff said to her, except Foust, herself heard what she made up, but claimed that the Plaintiff told her. The fact is that Myrtle Foust & Veronica McLean waited until Dec. 31, 1993 to report their made-up incidents claimed to have taken place between the Plaintiff and then just to blackmail the Plaintiff, and provide some proffered reasons to CSC's Officials in ex-

change for the "concealment of their identities" from Plaintiff. The CSC needed those proffered reasons which Its Officials used as pretext to discharge the Plaintiff from his job at Big Lots Store #266 in Greensboro, NC, for having protested against his former employer's unlawful employment practices toward him from May of 1993 to September of 1994.

The fact also, is that the Plaintiff was on 14 days annual vacation from December 22, through January 04, 1994 when the first 2 episodes of sexual harassment were alleged by Myrtle Foust & Veronica McLean to have taken place at Big Lots Store #266, therefore, could not have been true as the 2 defendants alleged. The fact is that Veronica McLean and Myrtle Foust waited and waited too long to make their reports of the alleged sexual harassment, until the CSC's Officials bargained with them by assuring them that their identities would not be disclosed to the Plaintiff after they have made their complaints against the Plaintiff on December 31, 1993, which the CSC's Officials used as pretext to discharge Plaintiff from his job at Big Lots Store #266 on 9/14/94. The truth is that the CSC's Officials and the defendants in the instant action conspired to stop Plaintiff from protesting CSC's unlawful employment practices toward him since May of 1993 to the time of the alleged sexual harassment; and through September 14, '94. The CSC's Officials chose to use the defendants' false allegations as pretext to discharge the Plaintiff because they knew that any Discharge of an employee "because he or she has opposed any practice made an unlawful employment practice by (Title VII)" violates section 704(a) of Title VII. 42 U.S.C. § 2000e-3(a).

3. The third conspiracy took place between the CSC's Officials and 3 defendants in this action when Jorja Williams visited Big Lots Store #266, at Greensboro, NC, on September 14, 1994, and invited Ms. Foust, Ms. Jones, and Ms. Oakley Resendiz to meet with her and Mr. Hartnagle, the then store manager of Big Lots Store #266 at the Big Lots Store #266 in Greensboro.

On page 10 of Jorja Williams' affidavit filed in the federal district court at Greensboro on January of 1998,

she stated from paragraph 22 through 24 that she received 3 complaints written against Mr. Odinkemelu by the 3 defendants in this action namely, Myrtle Foust, Karen Jones, and Alicia Oakley Resendiz on 9/14/94 Also, on the testimony that Mr. Hartnagle (the then store manager of Big Lots Store #266 at Greensboro) gave in response to some of the questions from the Employment Security Commission's Referee, Mr. Robert Haire, Hartnagle confirmed that he talked to the 3 complainants, Myrtle Foust, Karen Jones,& Oakley Resendiz who made the written complaints against the Plaintiff, Odinkemelu on the same September 14, 1994, at the Big Lots Store #266, G'boro. Mr. Hartnagle stated that he did not recall detailing, or disclosing to the Plaintiff who made those allegations against him before he discharged Plaintiff Odinkemelu from his job on Sept. 14, 1994, based on those false customer/employee complaints of 9/14/94.

There was a permissible inference of conspiracy between the CSC's Officials, (Ms. Jorja Williams, and Mr. Bill Hartnagle), and the 3 defendants in this case, (Myrtle, Karen, & Alicia), primarily, to interfere with the Plaintiff's protests against his former employer, the Consolidated Stores Corporation.

When Jorja Williams and Bill Hartnagle invited only the 3 defendants who falsely, accused the Plaintiff, Mr. Odinkemelu, without inviting also, the accused person, Mr. Odinkemelu and others who were eye-witnesses to any of the unproven allegations against Plaintiff, there was no doubt that a conspiracy to interfere with the Plaintiff's Civil Rights occurred during that one sided or partial meeting on September 14, 1994, which resulted to Plaintiff's discharge, and deprivation of his Right to continue protesting CSC's Discriminations and Retaliations toward him from May of 1993 through 9/14/94.

4. Also, for the mere fact that those 3 of the unproven allegations against the Plaintiff were written, and filed/ forwarded on that same September 14, 1994, as the 3 of the defendants were invited to the Big Lots Store #266 by the CSC's Officials, whereas the contents of those allegations against the Plaintiff showed that their alleged inci-

dents were said to have occurred on various/different and distant dates, and their filing time factor, together with their time frame for each alleged incident portray a permissible inference of conspiracy among the defendants to interfere with the Plaintiff's on-going protests by then against the CSC's discriminations, and Retaliations toward him.

On the complaint that Karen Jones, (one of the CSC's customers) wrote against the Plaintiff on Sept. 14, '94, she claimed that in one of her many trips to Big Lots #266 at Chapmans St. in G'boro, early in the A.M., that the Plaintiff spoke, and walked up to her and told her that she s a beautiful woman; and that some one had seen her coming in and told the Plaintiff that she was a woman for him. Also, Karen Jones did not indicate a time frame when that incident happened, because it was many months ago before the September 14, 1994 she was invited to Big Lots Store #266 by the 2 CSC's Official, and instigated to make the false complaint against the Plaintiff in support of Myrtle Foust's false sexual complaint written against the Plaintiff on that same date, Sept. 14, 1994. In Karen Jones' complaint written on Sept. 14, '94, she stated she reported that incident to Mr. Willy Stockton who was the CSC's security officer at the Big Lots Store #266 when Willy gave her a ride home on the same day she claimed that the Plaintiff harassed her sexually while she was shopping at Big Lots Store #266, G'boro

In the testimony that Mr. Stockton gave at the Employment Security Commission of North Carolina, at Greensboro on Nov. of 94 he stated on page 35 of his testimony that when he asked Karen if she would like to make a complaint of what she told him about the Plaintiff, Mr. Odinkemelu, she said that she would not; and that she would not be coming to Big Lots Store to shop again. But she did come to Big Lots to shop several times after the day she claimed that the Plaintiff sexually harassed her while she was shopping, yet, she never wrote any complaint against the Plaintiff until the CSC's Officials invited her on Sept. 14, '94, to write her false complaint against Plaintiff to bolster Myrtle Foust's false complaint

of sexual harassment written against the Plaintiff on that same September 14, 1994.

Mr. Stockton also, said in his testimony that when Foust's second incident of sexual harassment happened was when he decided to tell the store manager of Big Lots Store #266 about what Karen Jones told him when the Plaintiff harassed her many months ago as she came to shop at Big Lots Store #266 one early morning.

Mr. Willy Stockton was lying also, for Karen Jones because it was his duty as the Big Lots' Security Officer to make reports of all incidents that happens at the Big Lots Store #266 to the store manager, or assistant managers at the close of everyday. When the Plaintiff asked Mr. Stockton on page 40 of his testimony saying; "why didn't you tell me that she (Karen Jones) made a report?" Stockton answered: "I didn't think of it to tell you because of what you were telling me didn't coincide with what she said, and I didn't care to discuss it with you."

Also, when the ESC's Referee, Mr. Robert Haire asked Mr. Stockton on page 37 of his testimony saying: "So you reported this to whom Mr. Hartnagle?" (the store manager of store #266). Mr. Stockton said "Yes." The Referee asked him again saying: "And this report was made to Mr. Hartnagle after September 14th?

Mr. Stockton answered him saying: "We reported it when all the Ms. Foust' s incident happened."

If any of the allegations made by Karen Jones against the Plaintiff was true: and if Karen Jones did report such incident to Stockton what she claimed that the Plaintiff told her while she was shopping at the Big Lots Store #266 many months or weeks ago before Sept. 14, 1994, why did both of them wait until September 14, 1994 to make a report, and a written complaint of that incident at the same time that Myrtle Foust was making her second false complaint of sexual harassment against the Plaintiff? The answer tc this question is nothing less than "Conspiracy to Interfere with the Plaintiff's Civil Rights - the Right to protest Discriminations"

On the complaint that Alicia Oakley wrote against plaintiff on September 14, 1994, she argued that Plaintiff

refused to refund her money for the 3 items that she returned to the Big Lots Store #266 on Friday, September 9, 1994. But she did not write any complaint against Plaintiff until Myrtle Foust' s incident happened on September 14,1994.

Then, on Sept. 14, 1994, one of the defendants in this action, Ms. Foust wrote her second false complaint of sexual harassment against the Plaintiff in which she claimed that Mr. Chris Odinkemelu made a pass on her on Sept. 14, 1994.

On the last 3 lines of Foust's one page complaint against Plaintiff on Sept. 14, '94, she also, made a derogatory statement against the Plaintiff as she concluded her false complaint with the following comment: "He's making pass at our customer also."

The point here is, "how did Myrtle Foust know that a customer had also, written a false complaint of sexual harassment against the Plaintiff if there was no conspiracy among these defendants on, or before Sept. 14, '94, when infact, there was no complaint of sexual harassment filed against the Plaintiff by any Big Lots' customer prior to Foust' s second false complaint of sexual harassment against the Plaintiff on September 14, 1994?"

Also, why did Karen Jones and Alicia Resendiz wait until Foust's incident came up before they wrote their false complaints on Plaintiff?

The Sept. 14, '94 complaint that Myrtle Foust wrote against the Plaintiff was the second time she collaborated with other defendants, and raised false accusations against the Plaintiff with intent to disrupt the Plaintiff's protests of the CSC's unlawful employment practices against the Plaintiff, Mr. Chris. Odinkemelu. The first conspiracy was between Foust and McLean on Dec. 31, '93. The second conspiracy was among Foust, Jones, and Resendiz on Sept. 14. 1994. Each time Myrtle Foust filed her false complaint against the Plaintiff, she collaborated with one, or two other defendants in this action to raise their false complaints against the Plaintiff in their attempts to bolster her false complaints of sexual harassment against the Plaintiff.

There was a conspiracy involved every time Myrtle Foust filed any of her two false complaints of sexual harassment written against the Plaintiff, Mr. Chris. J. Odinkemelu on 12/31/93, and on 09/14/94. Therefore, if Myrtle Foust had not conspired with the CSC's Officials, and the rest of the defendants in the instant action, Veronica McLean, Karen Jones, and Alicia Resendiz would not have filed their false complaints against the Plaintiff to bolster the two complaints of sexual harassment that Foust wrote against him.

5. The speed with which the CSC's Officials had handled the second set of 3 false accusations written against the Plaintiff by Foust, Jones, & Resendiz on Sept. 14, '94, for which no thorough, or any verification of their validity was made before the CSC used them as pretext to discharge the Plaintiff from his job at Big Lots Store #266 on the same Sept. 14, '94 the 3 complaints were written, confirmed a permissible inference of conspiracy to interfere with the Plaintiff's Civil Rights — his Right to protest discriminations and retaliations toward him from his former employer, the Consolidated Stores Corporation with Its head office at Columbus, in Ohio State.

Also, there was an evidence of interference with the Plaintiff's Civil Rights by the defendants in this action as the Plaintiff continued his protests against the CSC's discriminations, and retaliation toward him in court in 1998, when defendants in the instant action followed the Plaintiff all the way to the court with their false allegations purposely, to disrupt the Plaintiff's legal suit against the CSC, and stopped his protests in court. Those elements of conspiracy & Interference of Plaintiff's Civil Rights were in violation of Title 42 USCS §§ 1983, 1985 & 1988.

CONCLUSION

In addition to all the facts already stated to show that there were elements of "Conspiracy to Interfere" with the Plaintiff's "Civil Rights" - his protected Right to protest Discriminations and Retaliations from his former em-

ployer, the CSC by the CSC's Officials and Defendants in this action, for the mere fact that all those allegations raised against the Plaintiff by these defendants are not true, it does increase and confirm the possibility of their intentional desire to conspire among themselves to interfere with the Plaintiff's Civil Rights by raising those false allegations, and using them as pretext for his discharge which finally stopped Plaintiff from continuing his protests against his former employer, the CSC.

Also, the point is that because those false allegations were raised against Plaintiff when he was exercising his constitutional Right, it confirmed the intents of CSC's Officials and Defendants in this action - which was to stop the Plaintiff from his Protests against the CSC's unlawful employment practices toward him between May of 1993, and September of 1994.

Therefore, the federal district court at Greensboro, NC had the power to exercise "Pendent Jurisdiction" over the Plaintiff's claims that he was discharged based on defendants' false allegations which interfered with Plaintiff's Civil Rights while the Plaintiff was protesting against his former employer's unlawful employment practices toward him: that defendants in the instant action conspired with his former employer, the CSC to interfere with his Civil Rights as his false accusers raised false allegations against him at the time he was protesting against the CSC's discriminations and retaliations toward him.

The state courts had no jurisdictions over this federal claim which was violated by defendants in this action with State claim.

Respectfully submitted this 16th day of April, 2001.

Christopher J. Odinkemelu
Pro-Se Plaintiff
886-8726.

THE FOLLOWING DESCRIBED EXHIBITS WILL BE PRESENTED BY PLAINTIFF

1. Page 15 of the court order issued on April 3, 1998 by the Honorable Judge Tilley stated 3 incidents of discriminations, and retaliations practiced against Plaintiff by his former employer, the CSC which Plaintiff was protesting between May & July '93

2. Also, on the first page of the letter that Plaintiff addressed to the Big Lots Regional manager, Mr. Loyd Barron at Vinton Virginia, on July 25, 1993, he stated from paragraph 2 about discriminations that he experienced from the CSC's Officials at the Big Lots Store #343 (which is also, used as management training center) at High Point, NC.

3. On page 1 of another letter that Plaintiff sent to the same Big Lots Regional manager, Mr. Loyd Barron but this time at Marieta, Georgia, on November 10, 1993, he complained about the retaliations he had received from the CSC's Officials at Big Lots Store in Greensboro, NC.

4. Finally, in the letter that Plaintiff wrote to another manager named Mr. Steve Page who was the district manager of all the Big Lots Stores in this district, the Plaintiff repeated the same complaints of discriminations, and retaliations he was receiving from the CSC's Officials.

5. In confirmation to the above stated discriminations and retaliations that the Plaintiff received and was protesting between May '93, and September 14, 1994, the Vice President of CSC Human Relation, Mr. Brad Waite stated on page 3 of his letter to the Equal Employment Opportunity Commission at Greensboro, NC, on December 28, 1994, in response to the questions that he was asked by the commission when the EEOC was investigating the Plaintiff's complaints against the CSC's discriminations and retaliations toward Plaintiff, that on quote: "In light of these things Chris had not been given the level of responsibility that he expected to have at Big Lots as an assistant manager. However, this was not due to lack of trust, but rather, to avoid placing him in situation where he would likely fail".

The above described exhibits do confirm that Plaintiff was actually protesting CSC's discriminations, and retaliations toward him when these defendants conspired with the CSC's Officials and interfered with the Plaintiff's Civil Rights which was in violation of Title 42, USCS § 1985, as amended.

CERTIFICATE OF SERVICE

The undersigned thereby certifies that a copy of the foregoing NOTICE OF APPEAL WAS DULY SERVED UPON Defendants through their counsel in accordance with the provisions of Rule 5 of the Federal Rules of Civil Procedure by depositing it in the United States Mail, first-class postage prepaid, addressed as follows:

ADAMS KLEEMEIER HAGAN HANNAH & FOUTS
701 GREEN VALLEY DR., SUITE 100
POST OFFICE BOX 3463
GREENSBORO, NC 27402.

CHRISTOPHER J. ODINKEMELU
307 - B WEST WARD AVENUE
HIGH POINT, NC 27260
(336) 886-8726.

STATE SUPERIOR COURT ORDER #00CVS1337

APPENDIX D

PL. EX. #10

NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
GUILFORD COUNTY	SUPERIOR COURT DIVISION 00 CVD 1337 00 CUS 1337

CHRISTOPHER J. ODINKEMELU,

Plaintiff,

v.

JORJA WILLIAMS, MYRTLE FOUST, VERONICA MCLEAN, KAREN JONES, and ALICIA OAKLEY RESENDIZ

Defendants.

ORDER

THIS MATTER COMING ON TO BE HEARD and being heard by the undersigned Superior Court Judge presiding at the August 21,2000 Civil Session of the General Court of Justice, Superior Court Division, for Guilford County, North Carolina, upon the Motions of Defendants Jorja Williams and Myrtle Foust to (1) Transfer the action to the Superior Court Division pursuant to N.C. Gen. Stat. § 7A-258; (2) Dismiss the Complaint pursuant to Rules 12(b)(6), 12(b)(l), 12(b)(2), 12(b)(4), and 12(b)(5) of the North Carolina Rules of Civil Procedure, the doctrines of res judicata and collateral estoppel and the statute of limitations found in N.C. Gen. Stat. § 1-54(3); and (3) for Sanctions pursuant to Rule 11 of the North Carolina Rules of Civil Procedure, and the Court having reviewed the file herein and heard the arguments of Plaintiff and counsel

for defendants Williams and Foust, this Court is of the opinion that the Motion to Transfer should be ALLOWED; that this action is barred by the doctrines of res judicata and collateral estoppel and the Motion to Dismiss should be ALLOWED; and further, as to the Motion for Sanctions, the Court makes the following:

FINDINGS OF FACT

1. Plaintiff filed the instant action against Defendants on May 19, 2000 attempting to state claims for relief for, *inter alia,* falsification of evidence and defamation.

2. Previously, Plaintiff filed an identical action against these same defendants in the District Court Division of the General Court of Justice, Guilford County, North Carolina which was entitled Odinkemelu v. Williams, et al., No. 99 CvD 2883.

3. The event out of which Plaintiffs claims in both the instant action and Odinkemelu v. Williams, et al., No. 99 CvD 2883, arose was a proceeding in the United States District Court for the Middle District of North Carolina which was entitled Odinkemelu v. Consolidated Stores International, No. 2:95CV00826, in which all of the defendants herein executed affidavits which were filed in support of Consolidated Stores' Motion for Summary Judgment.

4. The instant action involves the same plaintiff and same defendants as Odinkemelu v. Williams, et al., No. 99 CvD 2883.

5. Plaintiff has admitted, and counsel for these defendants agree, that the claims and issues in the instant action are identical to the claims and issues in Odinkemelu v. Williams, et al., No. 99 CvD 2883.

6. By Order dated March 27,2000, Judge W. Douglas Albright dismissed Odinkemelu v. Williams, et al., No. 99 CvD 2883, with prejudice, pursuant to Rules 1 2(b)(6) and 4 1(b) of the North Carolina Rules of Civil Procedure and the statute of limitations found in N.C. Gen. Stat. § 1-54(3).

7. Plaintiff filed a timely Notice of Appeal of Judge

Albright's Order, however, on Plaintiffs own motion, his Notice of Appeal was withdrawn and the appeal was dismissed by Judge Judson D. DeRamus, Jr. on June 26, 2000.

8. Plaintiff's Complaint is not well grounded in fact nor is it warranted by existing law or any good faith argument for the extension, modification or reversal of existing law. Further, Plaintiff's Complaint, as well as each and every claim therein, is barred by clearly established law.

CONCLUSIONS OF LAW

1. Judge Albright's March 27,2000 Order operated as a final adjudication on the merits of the claims raised in Odinkemelu v. Williams, et al., No. 99 CvD 2883.

2. The well established rule in North Carolina is that one Judge of the Superior Court may not overrule a fellow Judge of the Superior Court.

3. The instant action, which involves the same plaintiff, the same defendants and the same claims and issues as Odinkemelu v. Williams, et al., No. 99 CvD 2883, is barred by the doctrines of res judicata and collateral estoppel.

4. Plaintiffs Complaint contains no colorable claim, no cognizable claim and no justiciable claim and Plaintiff ignored clearly established North Carolina law in bringing the instant action.

5. As a consequence of the preceding Findings of Fact and Conclusions of Law, Plaintiff has violated Rule 11 of the North Carolina Rules of Civil Procedure and shall be sanctioned by the Court.

6. All sanctions from nominal to severe have been considered by the Court.

7. As an appropriate sanction for Plaintiffs egregious violation of Rule 11, the Court is of the opinion that Plaintiff should be prohibited from filing any further actions, causes of action, claims, charges, or demands in the General Court of Justice, Guilford County, North Carolina, against any of the defendants herein on any claim, issue or matter which was brought or raised in the instant action

or in Odinkemelu v. Williams, et al., No. 99 CvD 2883, or any actions, causes of action, claims, charges, or demands based on any claim, issue or matter within the scope of the instant action or Odinkemelu v. Williams, et al., No. 99 CvD 2883, which Plaintiff, in the exercise of reasonable diligence, could and should have brought forward for determination.

NOW THEREFORE, IT IS ORDERED that the Motion of these defendants to Transfer is **GRANTED** and this action is hereby transferred to the Superior Court Division of the General Court of Justice for Guilford County; IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the instant action is barred by the doctrines of res judicata and collateral estoppel and the Motion of Defendants Williams and Foust to Dismiss the Complaint is hereby **GRANTED**, and this action is hereby dismissed in its entirety, with prejudice; and IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff is hereby prohibited from filing any further actions, causes of action, claims, charges, or demands in the General Court of Justice for Guilford County, North Carolina, against any of the defendants herein on any claim, issue or matter which was brought or raised in the instant action or in Odinkemelu v. Williams, et al., No. 99 CvD 2883, or any actions, causes of action, claims, charges, or demands based on any claim, issue or matter within the scope of the instant action or Odinkemelu v. Williams, et al., No. 99 CvD 2883, which Plaintiff, in the exercise of reasonable diligence, could and should have brought forward for determination. Plaintiffs failure to fully comply with and abide by the Court's Order as set forth herein shall constitute contempt of court and will be punishable as such.

This the 23rd day of August, 2000.

s/Howard R Greeson
Superior Court Judge Presiding

DEFENSE MOTION TRANSFER & DISMISS THIS CASE FROM STATE COURT TO THE STATE SUPERIOR COURT IN SAME STATE (CASE #00CVS1337)

DEFENSE CLAIMS ON MOTION TO TRANSFER & DISMISS

PL. EX. #4

Despite the fact that his claims were barred by clearly established North Carolina law, Plaintiff filed a timely Notice of Appeal of Judge Albright's March 27, 2000 Order. Rather than pursue this baseless appeal, however, Plaintiff filed the Current State Action, moved to withdraw his Notice of Appeal, and made a request to get back some documents he filed with the clerk in opposition to the defendants' motions to dismiss. Plaintiffs motions came on to be heard before Judge Judson D. DeRamus, Jr. on June 26, 2000. After hearing the arguments of Plaintiff and counsel for defendants, Judge DeRamus allowed Plaintiffs motion to withdraw his Notice of Appeal and dismissed Plaintiffs appeal with prejudice. Judge DeRamus also denied Plaintiffs request to get back his documents.[5]

The Current State Action simply re-alleges the same material facts as in the First State Action and attempts to assert claims which are identical to the claims Plaintiff made in the First State Action. The Current State Action was filed one week before Plaintiff moved to withdraw his Notice of Appeal in the First State Action. It is readily apparent that the Current State Action is little more than an attempt by Plaintiff to get yet another bite at the apple and re-litigate the issues which were before Judge Albright in the First State Action as well as some of the

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[5]Judge DeRamus ordered, however, that Plaintiff could obtain the originals of his "sealed" documents from the First State Action if he paid the clerk to have the documents copied and the complete copy remained in the court file.

issues which were before Judge Beaty, the Fourth Circuit and the Supreme Court in the Federal Action.

The fact that the Current State Action is merely an attempt by Plaintiff to get a second bite at the apple is made clear in the Motion and Memorandum filed by Plaintiff in the instant action on July 7, 2000. Therein, Plaintiff argues that the Current State Action is the "same case" as the First State Action and involves "the same Plaintiff. . . the same Defendants. . . [and the] same matters in controversy." Additionally. Plaintiff states unequivocally that the purpose of the Current State Action is, in part, to appeal Judge Albright's order and re-litigate the issues in the First State Action.

As is discussed in detail herein, the claims and issues raised in the Current State Action are barred by the doctrines of res judicata and collateral estoppel. These issues were considered and dismissed by Judge Albright in the First State Action. Further, the Current State Action, like the First State Action, fails to state any claim upon which relief can be granted, and all the claims Plaintiff attempts to assert therein are barred by clearly established North Carolina law.

ARGUMENT

I. THIS ACTION SHOULD BE TRANSFERRED TO THE SUPERIOR COURT DIVISION PURSUANT TO N.C. GEN. STAT. § 7A-258.

Plaintiffs Complaint in the Current State Action prays for relief in an amount "in excess of $10,000" yet was

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[4]The First State Action was also improperly filed in the District Court division and Defendants Williams, Jones and Foust moved to transfer it to Superior Court. After hearing the arguments of Plaintiff and counsel for defendants, Judge Albright granted the motion to transfer. Despite this prior ruling, Plaintiff filed the Current State Action in the District Court division and it is again necessary for the defendants to move to transfer to Superior Court. See page 27 and line 12 of Judge Greeson's transcript condemning the Transfer Motion filed by defense counsel Pappas and Moore.

filed in the District Court Division. Pursuant to N.C. Gen. Stat. § 7A-243, the Superior Court Division "is the proper division for the trial of all civil actions in which the amount in controversy exceeds ten thousand dollars ($10,000)." N.C. Gen. Stat. § 7A-243. It is appropriate for this motion to be heard and determined by a Judge of the Superior Court. N.C. Gen. Stat. § 7A-258(b). Because Plaintiff prayed for relief in excess of$ 10,000, Plaintiff's action was improperly filed in the District Court Division.[4] Accordingly, this action should be transferred to the Superior Court Division.

Federal Action as claims for "falsification of evidence." Attempting to state a claim for falsifying evidence is the same as attempting to state a claim for perjury. See Henry v. Deen, 61 N.C. App. 189, 196, 300 S.E.2d 707, 711(1983). North Carolina law is exceedingly clear that ***"a civil action in tort will not lie for perjury" or for the falsification of evidence.*** Hawkins v. Webster, 78 N.C. App. 589, 591, 337 S.E.2d 682 684 (1985) (emphasis added); Henry, 61 N.C. App. at 196, 300 S.E.2d at 711. Accord Gillikin v. Springle, 254 N.C. 240, 118 S.E.2d 611 (1961) (stating that perjured testimony and subornation thereof will not support a civil action for damages).

Plaintiff attempted to state claims for perjury, subornation of perjury and conspiracy to commit perjury against these defendants in the First State Action. Judge Albright dismissed these claims. In so ruling, Judge Albright explained to Plaintiff that North Carolina law does not recognize these causes of action.

Despite this knowledge, Plaintiff attempts to state a claim for falsification of evidence in the Current State Action. As the law of North Carolina does not recognize a civil cause of action for "falsification of evidence," Plaintiffs claims, if any, for falsification of evidence should be dismissed pursuant to Rule 12(b)(6).

2. Defamation

In the Current State Action, Plaintiff again attempts to state claims for defamation based on (1) statements the

defendants made in late 1993 and/or early 1994 regarding Plaintiffs improper and/or threatening behavior toward them and (2) the statements the defendants made

A. Perjury and Subornation of Perjury

Plaintiffs Complaint is replete with words and phrases such as "perjurious," "false testimony," and "knowingly lying under oath." It is apparent that Plaintiff has attempted to state a cause of action for perjury and/or subornation of perjury. North Carolina law is exceedingly clear that ***"a civil action in tort will not lie for perjury or subornation of perjury."*** Hawkins, 78 NC. App. at 591, 337 S.E.2d at 684 (emphasis added). Accord Gillikin v. Springle, *254* N.C. 240, 118 S.E.2d 611(1961) (stating that perjured testimony and subornation thereof will not support a civil action for damages). As the law of North Carolina does not recognize a civil cause of action for either perjury or subornation of perjury, Plaintiffs claims should be dismissed pursuant to Rule 12(b)(6). See Hawkins, 78 N.C. App. at 591, 337 S.E.2d at 684 (affirming the trial courts dismissal of plaintiffs claims for perjury and subornation of perjury pursuant to Rule 12(b)(6).

B. Conspiracy to Commit Perjury

Plaintiffs Complaint also uses words and phrases such as "conspirators," "collaborators," and "collaborators in perjury." This language makes it appear that Plaintiff has attempted to state a cause of action for conspiracy to commit perjury. North Carolina law is also clear that a ***"civil cause of action may not be maintained for a conspiracy to give false testimony."*** Hawkins, 78 N.C. App. at 592, 337 S.E.2d at 684 (emphasis added). Pursuant to Rule 12(b)(6), Plaintiffs claims for conspiracy to commit perjury should be dismissed because North Carolina law does not recognize a civil cause of action for conspiracy to commit perjury.

STATE SUPRIOR COURT ORDER #99CV2883

PL. EX. #3

NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
GUILFORD COUNTY	SUPERIOR COURT DIVISION 99 CVD 2883

CHRISTOPHER J. ODINKEMELU,

Plaintiff,

v.

JORJA WILLIAMS, MYRTLE FOUST, VERONICA MCLEAN, KAREN JONES, and ALICIA OAKLEY RESENDIZ

Defendants.

ORDER

THIS MATTER COMING ON TO BE HEARD and being heard by the undersigned Superior Court Judge presiding at the March 27, 2000 Civil Session of the General Court of Justice, Superior Court Division, for Guilford County, North Carolina, upon the Motions of Defendants to Transfer the action to the Superior Court Division pursuant to N.C. Gen. Stat. § 7A-258 and to Dismiss the Complaint pursuant to Rule 1 2(b)(6) and Rule 41(b) of the North Carolina Rules of Civil Procedure, and the Court having reviewed the file herein and heard the arguments of counsel, this Court is of the opinion that:

1. The Motion to Transfer should be allowed; and
2. The Motions to Dismiss should be allowed;

NOW THEREFORE, IT IS ORDERED that Defendants' Motion to Transfer is GRANTED and this action is hereby transferred to the Superior Court Division of the

General Court of Justice of Guilford County; and IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Motions to Dismiss the Complaint are hereby GRANTED, and this action is hereby dismissed with prejudice.

This the 27 day of March, 2000.

s/W. Douglas Albright
Superior Court Judge Presiding

DEFENSE MOTION TO TRANSFER & DISMISS CASE #99CVD2883

PL. EX. #1

NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
GUILFORD COUNTY	SUPERIOR COURT DIVISION 99 CVD 2883
CHRISTOPHER J. ODINKEMELU, Plaintiff, v. JORJA WILLIAMS, MYRTLE FOUST, VERONICA MCLEAN, KAREN JONES, and ALICIA OAKLEY RESENDIZ Defendants.	**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS JORJA WILLIAMS, MYRTLE FOUST AND KAREN JONES'S MOTION TO TRANSFER AND MOTIONS TO DISMISS**

Defendants Jorja Williams, Myrtle Foust and Karen Jones, by and through their undersigned counsel, respectfully submit this Memorandum of Law in Support of their Motion to Transfer and Motions to Dismiss.

STATEMENT OF THE CASE AND FACTS[1]

Plaintiff filed this action on December 1,1999. He appears *pro se,* and his "Complaint" alleges that Defendants made alleged "perjurious, false, [and] misleading statement[s]" in Affidavits which were filed in an action

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[1]The facts are stated herein in the light most favorable to Plaintiff. Nothing contained in the Statement of Facts is, or is to be construed as, an admission by the Defendants. For ease of reference, a copy of the Complaint is attached hereto as Exhibit A.

Plaintiff commenced in United States District Court for the Middle District of North Carolina on November 28, 1995 and which went to trial on or about April 30, 1998 (the "Federal Action"). (Complaint p. 2, second paragraph). Plaintiff filed the Federal Action against Consolidated Stores Corporation ("CSC"), his former employer, and Jorja Williams, a human resources manager for CSC, for allegedly "discharging [him] unjustly."[2]

ARGUMENT

I. THIS ACTION SHOULD BE TRANSFERRED TO THE SUPERIOR COURT DIVISION PURSUANT TO N.C. GEN. STAT. § 7A-258.

Plaintiffs Complaint prays for relief in the amount of $6,000,000 yet was filed in the District Court Division. Pursuant to N.C. Gen. Stat. § 7A-243, the Superior Court Division "is the proper division for the trial of all civil actions in which the amount in controversy exceeds ten thousand dollars ($10,000)." N.C. Gen. Stat. § 7A-243. It is appropriate for this motion to be heard and determined by a Judge of the Superior Court . N.C. Gen. Stat. § 7A258(b). Because Plaintiff prayed for relief in the amount of $6,000,000, Plaintiffs action was improperly filed in the District Court Division. Additionally, in his response to Defendants' motions, Plaintiff asserts that he intended to file this action in Superior Court. Accordingly, this action should be transferred to the Superior Court Division.

II. PLAINTIFF'S COMPLAINT, EVEN WHEN LIBERALLY CONSTRUED AND TAKEN AS TRUE, FAILS TO STATE ANY CAUSE OF ACTION UPON WHICH RELIEF CAN BE GRANTED AND SHOULD

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[2]Plaintiff brought the Federal Action under Title VII of the Civil Rights Act of 1964, as amended, alleging national origin discrimination and retaliation in the termination of his employment by CSC. CSC asserted that Plaintiff was terminated for sexually harassing behavior toward other CSC employees and a customer and for making threatening comments to a customer.

BE DISMISSED PURSUANT TO RULE 12(B)(6).

"The essential question on a Rule 12(b)(6) motion is whether the complaint, when liberally construed, states a claim upon which relief can be granted on any theory." Hawkins v. Webster, 78 N.C. App. 589, 591, 337 S.E.2d 682, 683 *(1985).* In deciding a motion to dismiss under Rule 1 2(b)(6), "the trial court is to treat the allegations of the pleading it challenges as true." Id.

Plaintiff filed the present action *pro se* and it is difficult to determine the claims he is asserting in his Complaint. If the Complaint is "liberally construed," however, it is possible that Plaintiff has attempted to state causes of action for the following: (a) perjury, subornation of perjury, and conspiracy to commit perjury; and (b) defamation. None of these attempted causes of action for defamation. Id. Accordingly, Plaintiffs claims for defamation should be dismissed pursuant to Rule 12(b)(6).

2. Plaintiffs Claims for Defamation Are Barred by the One-year Statute of Limitations Contained in N.C. Gen. Stat. § 1-54(3).

Further, even if an extremely liberal reading of the Complaint indicates that any of the statements allegedly made by any of the Defendants were made outside of judicial proceedings, then such statements were made more than one year prior to the date the Complaint was filed and any claims thereon are barred by the one-year statute of limitations contained in N.C. Gen. Stat. § I - 54(3). The only statements which the Complaint even vaguely references which were made outside of the Federal Action were made as early as 1993 and possibly as late as 1994. The Complaint was not filed until December of 1999. North Carolina law is clear that a cause of action for defamation "accrues [and the one-year statute of limitations begins to run] at the date of the publication of the defamatory words, regardless of the fact that plaintiff may discover the identity of the author only at a later date." Price v. J.C. Penny Company, Inc., 26 N.C. App. 249, 252, 216 S.E.2d 154, 156, cert. denied, 288 N.C. 243,217 S.E.2d 666 (1975). Thus, any cause of action for defamation based

on those 1993 or 1994 statements is clearly time barred. Accordingly, any claims Plaintiff has asserted for defamation arising from such statements should be dismissed pursuant to Rules 12(b)(6) and 12(b)(1).

3. Plaintiffs Claims For Defamation Should Be Dismissed For Plaintiffs Failure to Comply With the Pleading Requirements Imposed by North Carolina Law.

Plaintiff failed to set forth the alleged defamatory statements with the level of particularity required by North Carolina law. See Stutts v. Duke Power Co., 47 N.C. App. 76, 266 S.E.2d 861 (1980). Therefore, any cause of action Plaintiff may have stated for defamation should be dismissed.

III. PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED PURSUANT TO RULE 41(b) DUE TO PLAINTIFF'S VIOLATION OF RULE 8(a)(2).

Rule 8(a)(2) states in pertinent part that "in all claims for punitive damages in any civil action, wherein the matter in controversy exceeds the sum or value often thousand dollars ($10,000), the pleading shall not state the demand for monetary relief, but shall state that the relief demanded is for damages incurred or to be incurred in excess often thousand dollars ($10,000)." Plaintiffs Complaint makes a claim for punitive damages, yet demands specific monetary relief of $6,000,000. This is a clear violation of Rule 8(a)(2). Accordingly, Plaintiffs Complaint should be dismissed pursuant to Rule 4 1(b) for failure to comply with Rule 8(a)(2).

IV. PLAINTIFF'S CLAIMS ARE BARRED BY THE DOCTRINES OF RES JUDICATA AND COLLATERAL ESTOPPEL AND SHOULD BE DISMISSED.

Under the doctrine of res judicata, "a final judgment on the merits in a prior action will prevent a second suit based on the same cause of action between the same parties or those in privity with them." Thomas M. Mclnnis & Associates, Inc. v. Hall, 318 N.C. 421, 428, 349 S.E.2d

552, *556* (1986). Similarly, the companion doctrine of collateral estoppel bars all subsequent actions which are based theories or defenses "which were or might have been presented" in the prior action. King v. Grindstaff, 248 N.C. 348, 356, 200 S.E.2d 799, 805 (1973) (quoting Cromwell v. County of Sac, 94 U.S. 351 (1877)); Little v. Hamel, 517 S.E.2d 901, 902 (N.C. App. 1999).

In this case, the basis of Plaintiffs claims is that he was fired from his job at CSC as a result of unlawful discrimination and retaliation in violation of Title VII, that Defendants lied about the events that led up to his termination, and, as a result, he lost the Federal Action directing a verdict in favor of the defendants in the Federal Action, which included Defendant Jorja Williams.[6]

s/Peter G. Pappas
Peter G. Pappas
N. C. State BarNo. 10464

s/Brian S. Clarke
Brian S. Clarke
N. C. StateBarNo. 26560
Attorneys for Defendants Williams and Foust

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[6] Jorja Williams was a defendant in the Federal Action. The court granted summary judgment in favor of Ms. Williams prior to trial.

DEFENSE MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

PL. EX. #2

Plaintiff alleges in this case that the alleged "falsely sworn Affidavits"[3] of Defendants were filed to "mislead the court.. . on 04/30/98, at U.S. District Court in Winston Salem, North Carolina" when the case was tried.[4] (Complaint p. 2, first paragraph).

Specifically, Plaintiff alleges that each of the Defendants "swore under oath to tell the truth, the whole truth, and nothing but the truth; so help her God in the Affidavit" which each executed. (Complaint p. 2, second paragraph [Jorja Williams]; p. 2, third paragraph [Myrtle Foust]; p. 3, first full paragraph [Veronica McLean]; p. 4, first paragraph [Karen Jones]; p. 4-5, carry-over paragraph [Alicia Oakley Resendiz]). Plaintiff alleges each Defendant "willfully provided perjurious, false, and misleading statements" in the Affidavits. (Id.) The Complaint also alleges, in essence, that the Defendants conspired to give false testimony in the Federal Action.

Defendants then filed a Motion to Transfer and Motions to Dismiss which are now before the Court. The

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[3]In the Affidavits referred to in the Complaint, two CSC employees, Veronica McLean and Myrtle Foust, and one customer, Karen Jones, stated that Plaintiff had made sexually harassing comments to them; another customer, Alicia Oakley Resendiz, stated that Plaintiff made threatening comments to her; and a human resources manager for CSC, Jorja Williams, stated that Plaintiff was terminated due to the sexually harassing comments made to Ms. McLean, Ms. Foust and Ms. Jones and for the threatening comments made to Ms. Resendiz. Each of these Affidavits was submitted to the Court in the Federal Action in support of Defendants' motion for summary judgment.

[4]April 30, 1998, the Honorable James A. Beatty, Jr., United States District Judge for the Middle District of North Carolina, granted CSC's motion for judgment as a matter of law at the close of Plaintiffs evidence pursuant to Rule 50 of the Federal Rules of Civil Procedure.

Motion to Transfer is brought pursuant to N.C. Gen. Stat. § 7A-258. The Motions to Dismiss are based on Rules 12(b)(6) and 4 1(b), the statute of limitations, and the doctrines of res judicata and collateral estoppel. For the reasons discussed below, Plaintiffs action should be transferred and dismissed.

PLAINTIFF'S APPEAL TO COURT ORDER #CVD2883

PL. EX. #23

NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
GUILFORD COUNTY	SUPERIOR COURT DIVISION HIGH POINT, NC 99 CVD 2883

CHRISTOPHER J. ODINKEMELU,

Plaintiff,

vs.

JORJA WILLIAMS, MYRTLE FOUST, VERONICA MCLEAN, KAREN JONES, and ALICIA OAKLEY RESENDIZ

Defendants.

PLAINTIFF'S "NOTICE OF APPEAL"

Pursuant to, Rule 8 of North Carolina Rules of Civil Procedure, Plaintiff, Christopher J. Odinkemelu respectfully submits to this Court his "Notice Of Appeal" on the Court Order of March 27, 2000, issued by Judge W. Douglas Albright which dismissed Plaintiff's complaints against Defendants of this case.

The dismissal Order concluded that Plaintiffs complaints against Defendant violated Rule 12(b)(6), and Rule 41(b) of the North Carolina Rules of Civil Procedure: but such finding by this Court was not fairly applied in this case by the presiding judge at the hearing who willfully ignored to look into the evidence that Plaintiff submitted to the Court before ruling.

Judge W. Douglas Albright did not spend any time at

all, to look into Plaintiff's evidence submitted to this court in a sealed envelope prior to that hearing he presided, and also, presented to him by his clerk at the Hearing on March 27, 2000. Those evidence could have helped Plaintiff in his argument to receive a fair Hearing and Judgment from this Court, if Judge Albright had not failed to consider Plaintiff's evidence in the sealed envelope submitted to this Court 30 days before the Hearing took place. The same evidence in the sealed envelope was presented to Judge Albright at the Hearing by his clerk when Plaintiff made reference of the evidence in the sealed envelope for Judge Albright's necessary action; but Judge Albright looked the other way , and could not receive the sealed envelope from the clerk of his court. Instead, Judge Albright spent most of the time asking defense attorney Moore, "who did Plaintiff sue, and for what?"

It did beat my expectation from Judge Albright when I heard him asking defense counsel Moore what Judge Albright should have known before presiding at that Hearing of March 27,2000. It proved that Judge Albright had no in-depth knowledge of the case he presided its Hearing. Judge Albright was not only partial in his finding, but he was also, very antagonistic to all the things that Plaintiff said, and did at the Hearing. Judge Albright started his opening remark at the Hearing with questioning Plaintiff's eligibility to represent himself at the hearing, and refused to commence the hearing because Plaintiff had no attorney representing him; he changed his mind when defense counsel Moore convinced him that Plaintiff could represent himself very well at that Hearing.

Secondly, Judge Albright grew impatient with Plaintiff's argument at the Hearing when Plaintiff stated the "Motive and Intent" of one of his false accusers who wanted Plaintiff fired from his job at Big Lots Store because of his belief in his "Culture of Female Circumcision" in her early age. Judge Albright criticized the way Plaintiff brought it up in an open Court regardless the importance of such argument in this case.

At that point, Judge Albright said that he had heard enough of Plaintiff's argument, and he dismissed his

complaints against Defendants of this Civil A. ion despite Plaintiff's pleading that the Judge should confirm his argument with reference to his evidence presented to this Court in a sealed envelope which Judge Albright's court clerk/secretary brought to the Hearing ; but Judge Albright never opened the sealed envelope to lo into those Plaintiff's evidence before he entered his partial dismissal Court Order which claimed that Plaintiff's complaints violated Rule 12(b)(6) and Rule 41(b) of the North Carolina Rules of Civil Procedure. But what Judge Albright deliberately failed to include in his unprecedented finding are the Rules that Defendants and defense counsel violated when: –

(1) When 2 CSC's managing Staff who investigated all the alleged accusations against Plaintiff bluntly refused to disclose to him names of his accusers at the time they told him in 1994, that he had been discharged from his job at Big Lots Stores because of customer/employee complaints.

(2) When Defendants in this action posed as witnesses for defendant, CSC against Plaintiff, Christopher J. Odinkemelu in the prior case, even though those posing witnesses had not proven their allegations against plaintiff before they could be eligible to pose as witnesses for CSC in that prior case which ended in 1998. (SEE PP.11—15 of Court Order of 4/3/98 by Tilley.)

(3) When Defendants in this case and defense counsel Peter Pappas willfully furnished Plaintiff Christopher J. Odinkemelu with list of false Home Addresses and Phone numbers of those posing witnesses in the prior case on April '98.

(4) When defense counsel Pappas and Moore claimed in their motion to dismiss this action even though, both defense counsel were aware of two Court Orders issued by two federal district court judges on Feb. 24, '97, and on May, 05, '98, respectively, which defined the "Defendant" and the "Matters in Controversy' in that prior case as "Consolidated Stores Corp. and "Discrimination, & Retaliation against Plaintiff" respectively, which were quite different from the "Defendants", and "Matters Controverted" in this case before Judge Albright dismissed it on

the basis of having violated Rule 41(b) when in reality Plaintiff's complaints against Defendants in this case did not violate Rule 41(b), nor did it violate Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, in his avoidance of violating R.12(b)(6). Judge Albright would have issued a different Court Order if he had taken some time to review the sealed envelope evidence which was presented to this Court for their necessary action prior to, and during the Hearing of 03/27/00.

In view of the above explanation and Judge Albright's mistake or failure to conduct a fair and impartial Hearing, Plaintiff, Christopher files this "Notice of Hearing" in this Court with an intent to file his "Informal Brief" in Appeal Court within 35 days from the date of this notice.

Submitted this the 8th day of April, 2000.

CHRIS J. ODINKEMELU
Per Se Plaintiff
(336) 886-8726

UNITED STATES DISTRICT COURT ORDER ON CASE #2:95CV00826

APPENDIX E

PL. EX. #13

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

CHRISTOPHER J. ODINKEMELU Plaintiff,	)	
v.	)	2:95CV00826
JORJIA WILLIAMS and CONSOLIDATED STORES INTERNATIONAL, Defendants.	)	

MEMORANDUM OPINION and ORDER

TILLEY, District Judge

This matter is before the Court on Defendants' Motion to Dismiss [Doc. # 9].[1] For the reasons stated below, the Motion to Dismiss is GRANTED as to Ms. Williams and DENIED as to Consolidated Stores Corporation.

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[1]The names in the caption seem to have been a source of confusion; however, for purposes of this motion, the Court will refer to Consolidated Stores Corporation, doing business as Big Lots Stores, and Jorjia Williams the Defendants in this case.

I.

Plaintiff was employed at Big Lots as an assistant manager from January of 1993 until September of 1994. Plaintiff was discharged September 14, 1995. Jorjia Williams, manager of human relations, told Plaintiff that he was discharged due to employee and customer complaints. However, Plaintiff contends that he / was discharged for discriminatory reasons based on his race and his country of origin, Nigeria. Plaintiff is proceeding in this lawsuit pro se.

Course in 1993. However, he was not allowed to begin work in the store he was assigned to in Tampa, Florida. Ms. Williams told him that she needed an American citizen to fill the position. When Plaintiff complained, Ms. Williams threatened to fire him. Also, Ms. Williams retested him on the materials he learned at the Office Managers' Course but did not retest anyone else. Plaintiff contends that Ms. Williams discriminated against him by having two counseling notes issued to him. The first note was issued for what Ms. Williams termed a threat to a fellow employee when Plaintiff warned that employee that he would have him sent to jail after deliberately hurting his foot with a jack roller. The second note was issued when a white female employee complained that Plaintiff was rude to her and that he touched her. However, Plaintiff claims that a white male employee had a similar incident with the female employee but was not written up.

II.

Defendants filed the Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) (lack of jurisdiction over the subject matter), 12(b)(4) (insufficiency of process), and 12(b)(5) (insufficiency of service of process). Defendants contend that Ms. Williams, as an individual defendant, was not properly named as a defendant in this action and that Consolidated Stores Corporation was not properly served.

A. Individual Defendant

A motion to dismiss pursuant to Rule 12(b)(1) attacks the subject matter jurisdiction. The party claiming subject matter jurisdiction has the burden to prove jurisdiction. Lane v. Jacobson & Co., Ltd., 880 F. Supp. 1091 (E.D.Va. 1995). See also, Adams v. Bain, 697 F.2d 1213, 1219 (4th Cir. 1982). "In a facial attack, the court assumes all the facts in the complaint are true, thus providing the plaintiff with the same procedural protections as a Rule 12(b)(6) determination." Id. In determining whether jurisdiction is proper, the Court may consider evidence outside the complaint. Id. Because this Plaintiff is pro se, this Court has carefully examined the complaint.

Defendants contend that the Court does not have subject matter jurisdiction over Ms. Williams because there is no individual liability for an employee under Title VII.[2] The greater weight of authority throughout the circuits is that an employee or supervisor cannot be held individually liable for discrimination under Title VII. See Grant v. Lone Star Co., 21 F.3d 649 (5th Cir.) (Title VII does not provide for liability against individual employees who do not otherwise qualify as employers), cert. denied, 115 S. Ct. 574 (1994); Miller v. Maxwell's Int'l. Inc., 991 F.2d 583 (9th Cir. 1993), cert. denied, 114 S. Ct. 1049 (1994); Busby v. City of Orlando, 931 F.2d 764, 772 (11th Cir. 1991) (relief under Title VII is against the employer, not individual employees whose actions violate Title VII).

Under Title VII, it is unlawful for an "employer" to discriminate against any individual because of "race, color, religion, sex, or national origin." 42 U.S.C. §2000e-2(a)(1). An "employer" is defined as "a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks . . . and any agent of such a person." 42 U.S.C. § 2000e(b). The court in Miller addressed the question of

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[2]Williams also contends that the Court does not have subject matter jurisdiction because she was not named as a respondent in the EEOC charge. The Court does not need to reach this issue.

whether supervisory personnel and other agents of the employer would be employers for the purposes of liability. The court held that the purpose of the agent provision was to incorporate respondeat superior, not to have individual liability. Miller, 991 F.2d 583, 587. The Fourth Circuit recently cited the Miller decision with approval. Birkbeck v. Marvel Lighting Corp., 30 F.3d 507, 510 (4th Cir.), cert. denied, 115 S. Ct. 666 (1994). In Birkbeck, the court found that an individual supervisor could not be held liable under the Age Discrimination in Employment Act (ADEA) because such supervisor did not satisfy the definition of employer. Id. at 510-11. The definition of "employer" under the ADEA substantially mirrors that in 42 U.S.C. §2000e(b); the main difference being the number of employees required.[3] See 29 U.S.C. § 630(b). Ms. Williams does not meet the definition of an employer: therefore, she can not be held individually liable and the case against her is DISMISSED.

B. Consolidated Stores

First, Defendants contend that Consolidated Stores has not been named as a defendant in this action. This has been addressed by the issuance of the summons and complaint served upon Consolidated Stores on January 26, 1996.

Second, Defendants contend that a summons has not been issued against it and that it has not been properly served. However, since the Motion to Dismiss was filed, Consolidated Stores was served with a summons and the complaint [Doc. #15]. According to Federal Rules of Civil Procedure Rule 4(m), service of the summons and complaint must be made within 120 days after the filing of the

---

[3]The ADEA defines "employer" as "a person engaged in an industry affecting commerce who has twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year . . . The term also means (1) any agent of such a person."
29 U.S.C. § 630(b).

complaint. The complaint [Doc. #1] was filed on November 28, 1995. The summons was served on January 26, 1996. Therefore, the service was timely. The Motion to Dismiss for insufficient service of process has been rendered moot by subsequent compliance and therefore is DENIED.

III.

For the reasons stated above, Defendants' Motion to Dismiss [Doc. #91 is GRANTED in part and DENIED in part. The motion is GRANTED as to Defendant Williams and DENIED as to Consolidated Stores Corporation.

This the 24th day of February, 1997.

s/Carlton Tilley
United States District Judge

A COPY OF ALL PROCEEDINGS THAT TOOK PLACE ON CASE #1:00CV00750

APPENDIX F

U.S. District Court
Middle District of North Carolina (Durham)

CIVIL DOCKET FOR CASE #: 00-CV-750

ODINKEMELU, et al v. WILLIAMS Assigned to: JUDGE JAMES A. BEATY, JR. Demand: $10,000 Lead Docket: None Dkt# in other court: None	Filed: 08/11/00 Jury demand: Plaintiff Nature of Suit: 320 Jurisdiction: Diversity

Cause: 28:1332 Diversity-Libel, Assault, Slander

CHRISTOPHER J. ODINKEMELU plaintiff	CHRISTOPHER J. ODINKEMELU [COR LD NTC] {PRO SE] 307-B W. WARD AVE. HIGH POINT, NC 27260 336 866-8726
v.	
JORJA WILLIAMS defendant	PETER G. PAPPAS {COR LD NTC] ADAMS KLEEMEIER HAGAN HANNAH & FOUTS POB 3463 GREENSBORO, NC 27402 336-373-1600
MYRTLE FOUST defendant	PETER G. PAPPAS (See above) [COR LD NTC]

VERONICA MCLEAN
defendant

KAREN JONES
defendant

ALICIA OAKLEY RESENDIZ
defendant

Docket as of April 20, 2001 4:49 pm Page 1
Proceedings include all events. 18BA APPEAL
1:00cv750 ODINKEMELU CLOSED
SO30

8/11/00	--	**Case assigned to Magistrate Judge ELIASON. AO Code 18AG (kw) [Entry date 08/14/00]
8/11/00	1	COMPLAINT with attachments; Filing Fee $ 150 Receipt # 64524; jury demand (kw) [Entry date 08/14/00]
8/11/00	2	SUMMONS issued for JORJA WILLIAMS, MYRTLE FOUST, VERONICA MCLEAN, KAREN JONES, ALICIA OAKLEY RESENDIZ (kw) [Entry date 08/14/00]
8/11/00	--	STANDING ORDER 30 CASE (kw) [Entry date 08/14/00]
8/11/00	--	Notice of Right to Consent 28 USC 636(c) (2) (kw) [Entry date 08/14/00]
8/29/00	3	MOTION by JORJA WILLIAMS, MYRTLE FOUST to Extend Time for thirty (30) days to and including October 5, 2000 to answer or otherwise respond to the plaintiff's complaint Defendant's attorney has not contacted the plaintiff because he is acting in a pro se capacity (lks)

9/5/00	4	ORDER granting [3-1] motion to Extend Time for thirty (30) days to and including October 5, 2000 to answer or otherwise respond to the plaintiff's complaint set Answer deadline to 10/5/2000 for MYRTLE FOUST, for JORJA WILLIAMS signed by MAG/JUDGE RUSSELL A. ELIASON [EOD Date 9/5/00] (jw)
9/22/00	5	RESPONSE by plaintiff CHRISTOPHER J. ODINKEMELU to defendants' intended Motion for Sanctions against plaintiff (with copies of affidavits and order attached) . Defendants Motion has not been filed. (lks) [Entry date 09/25/00] [Edit date 09/25/00]
9/22/00	6	RESPONSE/NOTICE by CHRISTOPHER J. ODINKEMELU to [3-1] motion to Extend Time for thirty (30) days to and including October 2000 to answer or otherwise respond to the plaintiff's complaint by MYRTLE FOUST, JORJA WILLIAMS (lks) [Entry date 09/25/00] [Edit date 09/25/00]. For revenge reasons it was reassigned to deny plaintiff 14th Amendment of U.S. Constitution.
9/29/00	--	**Case reassigned to Magistrate Judge Sharp re 2:95CV826. AO Code 18BA (glp) [Entry date 10/01/00]
10/5/00	7	MOTION by JORJA WILLIAMS, MYRTLE FOUST to Dismiss (iks)
10/5/00	8	BRIEF by JORJA WILLIAMS, MYRTLE FOUST in support of [7-1] motion to Dismiss (with attached appendix) (lks) [Edit date 10/05/00]
10/5/00	9	Letter to Pro Se Party, Re: Right to Respond. RE: Pldg No. 7 (lks)

10/6/00 10 MOTION by JORJA WILLIAMS, MYRTLE FOUST for Sanctions (lks)

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EVIDENCE TO SHOW THAT DEFENSE COUNSEL CANNOT TRANSFER ONE CASE FROM STATE COURT TO ANOTHER STATE COURT IN THE SAME STATE

PL. EX. #9
EXCERPT FROM COURT TRANSCRIPT

Odinkemelu v. Williams, 00 CVS 1337

accept this, and that motion is granted, that this Court take jurisdiction.

Further, I don't feel that this Court can in any way rule based on any of the matters that you've put before me, because Judge Albright has already done this. One Superior Court judge cannot overrule another Superior Court judge. The Plaintiff in this case has stated that the matters contained in this new indictment are identical to the matters that Judge Albright ruled on, and since this Court cannot overrule Judge Albright, this Court is going to have to deny this motion and dismiss this case, due to the fact that another Superior Court judge has ruled on it.

MR. ODINKEMELU: Okay.

MR. PAPPAS: Could I ask for a bit of clarification, your Honor? He refiled — The case that Judge Albright ruled on was 99 CVD—

THE COURT: It's the same thing. All right. I'll just say it's res judicata, then. This Court cannot rule upon it because another Superior Court judge has ruled upon it, and I find that as a fact, and conclude as a matter of law that the parties are the same, the issues are the same, and it's res judicata.

MR. PAPPAS: And you're entering that order in the second case—

THE COURT: In this case it's res judicata of the first case, the one that Judge Albright— Is that correct, Mr. Clarke?

MR. CLARKE: Yes, your Honor. This action is precluded by the doctrine of res judicata based on Judge Albright's previous ruling.

THE COURT: In other words, I couldn't just — and I couldn't enter any orders anyway, because he's already ruled on the same matters. We have this other matter too, that being one Superior Court judge couldn't 'overrule another, no matter what you call it, whether you call it a new case or not a new case, and I want that in there.

There is no statutory avenue that I know of that will also transfer it from one court to the other. You still have your case in Federal District Court.

Have we got some more matters here? Is this it?

MR. PAPPAS: Your Honor, we also have a Motion for Sanctions, that based upon all this prior litigation, Mr. Odinkemelu was in court in Federal Court for three or four years on a matter against Consolidated Stores Corporation, his former employer, and Ms. Williams. Now he filed an action in the last year against the witnesses in the Federal Court action in the court here in Guilford County. Then in May he comes around and files another lawsuit, your Honor.

In our Motion for Sanctions, we're asking this Court to give these parties some protection and enter an order based upon all of the prior litigation, much of which is frivolous or without any merit, to enter an order requiring that any further actions brought by Mr. Odinkemelu be pre-cleared with the Court before he's allowed to file and serve them. And we have extensive information for the Court on that motion.

MR. ODINKEMELU: Your Honor, it was not frivolous, because this Court had no jurisdiction over this case. I have the rights to appeal my case.

THE COURT: No. No, that's not what you're doing. You have admitted yourself, you filed the same suit that you filed before.

MR. ODINKEMELU: I thought it was in District—

THE COURT: Well, I don't care where you thought it was. You filed it, and you have an obligation to file it in the right venue, not this court.

MR. ODINKEMELU: You are right, sir, but the court has an obligation to let me know.

THE COURT: Take this down and research, I think

PL. EX. #5

it's the *Allstar Mills* case—

MR. CLARKE: Yes, sir.

THE COURT: But I didn't realize this. He is not to file. I'm not going to— He is not to file any complaint in this court, in the General Court of Justice in High Point or Greensboro, any actions against these defendants contained in the same Cause of Action that's been previously filed in these last two cases. And to do so will be in Contempt of this Court.

Check the *Allstar Mills* case, *Lowder versus Allstar Mills*. I didn't think you could do that, but I got reversed. It's about a 1991 case.

All right. This matter is concluded.

MR. PAPPAS: Shall we prepare an order and bring it back for the Court's consideration?

THE COURT: Yes. Do it this week. I want him to see a copy of it. Make sure they can get up with you, Mr. Odinkemelu, and show you a copy of this order.

MR. PAPPAS: Your Honor, the only way we can really do this is by mail.

THE COURT: Does he not have a fax machine?

MR. PAPPAS: No, sir.

THE COURT: Well, I don't think you have time to do it by mail. Why don't you just pick a time this week to meet him here with it, so that we can take care of it. Can we just set a time now?

MR. PAPPAS: Yes, sir. How about Wednesday at twelve o'clock?

THE COURT: That's fine. High noon?

MR. PAPPAS: Yes, sir.

THE COURT: Be here at noon, twelve o'clock Wednesday morning.

MR. ODINKEMELU: Wednesday morning?

THE COURT: Yes, sir.

MR. ODINKEMELU: I will be here.

THE COURT: Okay. Be here at twelve, and they'll present you with a copy of the order.

MR. ODINKEMELU: Why would they present me

something, your Honor? I think the Court should present—

THE COURT: Just be here at twelve o'clock, Mr. Odinkemelu.

MR. ODINKEMELU: On Friday?

THE COURT: Wednesday at twelve o'clock.

MR. ODINKEMELU: This courtroom?

THE COURT: Yes, sir.

MR. ODINKEMELU: Thank you, your Honor.

THE COURT: Thank you.

END OF TRANSCRIPT

EVIDENCE OF GOOD CAUSES IN THE INSTANT ACTION WHICH DID TOLL R12(b)(6)

PL. EX. #15

In American Pipe & Constr. Co. v. Utah, 414 U.S. 538, 94 S. Ct. 756, 38 L. Ed. 2d 713 (1974), some relief from the running of the statute of limitations was accorded. In that case, **the Supreme Court enunciated the rule that "the commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action."** 414 U.S. at 554. It would appear that this holding satisfactorily resolves earlier doubts respecting whether the statute of limitations is tolled during the pendency of an undetermined class action request that is finally denied. *See* 7A Wright & Miller, Federal Practice and Procedure § 1795; Frankel, *Some Preliminary Observations Concerning Civil Rule 23,* 43 F.R.D. 39, 40 (1968); *cf.* Philadelphia Elec. Co. v. Anaconda Am. Brass Co., 43 F.R.D. 452, 460 (E.D. Pa. 1968). There is some suggestion in the *American Pipe* case, however, that the applicable statute of limitations may not be tolled when maintenance of the class action is denied "for failure of the complaint to state a claim on behalf of the members of the class . . . [or] for lack of standing of the representative, or for reasons of bad faith or frivolity." *See* 414 U.S. at 553, *quoting from* Utah v. American Pipe & Constr. Co., 473 F.2d 580, 584 (9th Cir. 1973). It appears, therefore, that expedition in determining these issues may be warranted. Further, the possible loss of discovery during the pendency of an undetermined class action request demands, under most imaginable circumstances, early judicial action on the class action issue. It is recognized, however, that "the time at which the court finds it 'practicable' to make that determination may vary with the circumstances." 7A Wright & Miller, Federal Practice and Procedure § 1785 at 129-30.

78 N.C. APP. 581 WHICH PROVIDES EXCEPTIONS IN DISMISSAL UNDER RULE 12(b)(6)

PLAINTIFF'S EVIDENCE OF DEFENSE DENIALS TO DISCLOSE IDENTIFIES OF DEFENDANTS IN THIS ACTION TO PLAINTIFF WHEN THE OFFENSE WAS ALLEGED AGAINST HIM.

PL. EX. #16

The essential question on a Rule 12(b)(6) motion is whether the complaint, when liberally construed, states a claim upon which relief can be granted on any theory. *Benton v. Construction Co.,* 28 N.C.App. 91, 220 S.E.2d 417 (1975). In deciding such a motion the trial court is to treat the allegations of the pleading it challenges as true.

**684 Smith v. Ford Motor Co.,* 289 NC. 71, 221 S.E.2d 282 (1976). Rule 12(b)(6) generally precludes dismissal except in those instances in which the face of the complaint discloses some insurmountable bar to recovery.. *Brown v. Brown,* 21 N.C.App. 435 204 S.E.2d 534 (1974). We apply these principles to each of the claims advanced by Hawkins in his complaint.

DEFENSE SUPPLEMENTARY FINAL PRETRIAL DISCLOSURES

PL. EX. #17

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

CASE NUMBER: 2:95CV00826

MR. CHRISTOPHER J. ODINKEMELU,	) COULD DEFENSE COUNSEL) IN THE INSTANT CASE FILE) FOR DISMISSAL OF THIS
Plaintiff,	) CASE BASED ON VIOLATION) OF RULE 12(b)(5) WHEREAS,
v.	) THE CSC DELIBERATELY,) REFUSED TODISCLOSE THE
CONSOLIDATED STORES INTERNATIONAL	) NAMES & ADDRESSES OF) THESE DEFENDANTS TO) PLAINTIFF IN '94 ALSO,
Defendant.	) ATTORNEYS PAPPAS &) MOORE KNOWINGLY,) ISSUED PLAINTIFF A LIST) OF FAKE HOME ADDRESSES) OF THE DEFENDANTS IN '98.) IN VIOLATION OF THE) COURT ORDER OF MARCH) 12, '98, WHICH ORDERED) THEM TO FURNISH PLAIN-) TIFF WITH CORRECT HOME) ADDRESSES OF WITNESSES?)

SUPPLEMENTAL FINAL PRETRIAL DISCLOSURES

Pursuant to the Court's Order of March 1.2, 1998, and Rule 26(a)(3), defendant, Consolidated Stores Corporation ("CSC"), by and through its undersigned counsel, provides

the last known addresses and telephone numbers of the following witnesses identified in its Final Pretrial Disclosures (served March 6, 1998):

Veronica McLean, 4411 Baker Ave., Apt. C, Greensboro, NC 27407 (336) 297-1916

Myrtle Foust, 216 Craig Street, Greensboro, NC 27406 (336) 230-1539

Karen Jones, 3608 Sharon Avenue, Greensboro, NC 27405 (336) 375-1047

Alicia Oakley Resendiz, 1206 Second Street, Eden, NC 27288 (336) 627-0745

This the 16th day of March, 1998.

DEFENSE MOTION FOR PROTECTIVE ORDER AGAINST PLAINTIFF

PL. EX. #17-B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

CASE NUMBER 2:95CV00826

MR. CHRISTOPHER J. ODINKEMELU, Plaintiff, v. CONSOLIDATED STORES INTERNATIONAL, Defendant.	) DEFENDANT'S MOTION FOR PROTECTIVE ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, defendant Consolidated Stores Corporation ("CSC"), by and through its undersigned counsel, respectfully moves the court for a protective order providing that, with respect to Rule 26(a)(3) pretrial disclosures, the defendant need not disclose the last known addresses and telephone numbers of four trial witnesses, Myrtle Foust, Veronica McLean, Alicia Oakley Resendiz, and Karen Jones. These persons complained to defendant that plaintiff harassed or intimidated them during the time that plaintiff was employed by defendant. CSC has filed a supporting memorandum of law contemporaneously herewith.

WHEREFORE, defendant CSC respectfully prays that the Court enter a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, providing that the scope of the disclosure concerning these four witnesses be limited to their names and cities of residence, or that the disclosure

of appropriate information concerning the witnesses be made only on such specified terms and conditions, as may be provided by the Court.

This the 6th day of March 1998.

s/Larry I. Moore, III
Larry I. Moore, III
N.C. State Bar No. 8912

s/Peter G. Pappas
Peter G. Pappas
N. C. State Bar No. 10464
Counsel for Consolidated
Stores Corporation

OF COUNSEL:

ADAMS KLEEMEIER HAGAN HANNAH & FOUTS
A Professional Limited Liability Company
Lake Point
701 Green Valley Dr., Suite 100
Post Office Box 3463
Greensboro, NC 27402
(336) 373-1600

THE AFFIDAVIT OF PENNY DAVIS SWORN AGAINST PLAINTIFF

PL. EX. #18

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

CASE NUMBER: 2:95CV00826

MR. CHRISTOPHER J. ODINKEMELU, Plaintiff,	)	
v.	)	AFFIDAVIT OF PENNY DAVIS
CONSOLIDATED STORES INTERNATIONAL, Defendant.	)	

Penny Davis, being duly sworn, states as follows:

1. I am employed by Consolidated Stores Corporation ("Consolidated") as Director of Human Resources Development. I make this Affidavit upon my own personal knowledge.

2. In 1992 and 1993, I was the Manager of Staffing and Development for Consolidated. During this time period, Linda Moore was a Management Recruiter for Consolidated and reported to me.

3. Mr. Odinkemelu began work as an Assistant Store Manager in mid-January,

1993 at the Big Lots Store in High Point, N.C. (Store No. 343). He was also to receive his training there. He was later assigned to one of the Big Lots stores in Greensboro, N.C. (Store No. 266).

4. In the early portion of 1993, Mr. Odinkemelu contacted me concerning the possibility of being trans-

ferred to one of the new Big Lots stores that were being opened by Consolidated in the State of Florida. He expressed an interest in the store that was being opened in Tampa. I explained to him that he had only joined Consolidated in mid-January, 1993, that he was a new hire and still in training as an assistant manager, that it was not

whom he interacted. I observed that he was abrupt, highly directive, and condescending to the hourly employees, particularly the female employees. I also observed that he was rude to a female cashier. I was surprised by the tone Mr. Odinkemelu used with these employees. I learned that day that Mr. Odinkemelu was rude to the employees, particularly the female employees.

8. Later, I spoke with Mr. Odinkemelu privately. As a result of my earlier observations, I initially spoke with Mr. Odinkemelu about his communications with the employees. I cautioned him about talking "down" to other employees. I asked him why he was rude to the cashier, and not to me, and he responded that I was a person of position. I told him that he should speak with the other employees and customers in the same respectful tone with which he was speaking to me that afternoon.

9. I then explained to Mr. Odinkemelu that female employees had complained that he had made improper remarks and requests to them and that some of these remarks and requests were of a sexual nature. He said that they must have misunderstood. He asked for their names, and I told him that I was not at liberty to disclose them. I cautioned him that if he was engaged in activities of this kind, he needed to stop. I reviewed Consolidated's policy against harassment and its Standards of Conduct Policy with him. I told Mr. Odinkemelu that if other complaints were received that he had made inappropriate comments or comments of a sexual nature to anyone, that the complaints would be considered very serious, and that his employment with Consolidated could be subject to termination. Although formal disciplinary action was not taken against Mr. Odinkemelu, Mr. Odinkemelu was never exonerated of the sexual harassment complaints which were made.

TRANSCRIPT TESTIMONY OF
STORE MANAGER – MR. HARTNAGLE

PL. EX. #18-B

TRANSCRIPT OF TESTIMONY

S.S. NO: 247-43-3688 DOCKET NO: VIII-1-18259

CLAIMANT
Christopher Odinkemelu
307-B West Ward Avenue
High Point, NC 27260-7553

and

EMPLOYER
Consolidated Stores, International
Corporation
c/o The Frank Gates Service Company
Post Office Box 16580
Columbus, OH 48216-6580

HEARING DATE: November 15, 1994
APPEALS REFEREE: Robert M. Haire
TRANSCRIBER Sharon Eldridge
DATE: December 29, 1994

Q: Okay. The question simply is, did you detail who made the allegation of harassment to Mr. Odinkemelu when you discharged him?
EMPLOYER WITNESS TESTIFIES AS FOLLOWS:
(HARTNAGLE)
A: I don't recall.
Q: Okay.
CLAIMANT TESTIFIES AS FOLLOWS:
A: When you told me that there was an investigation going on, the day you suspended me, it was on 14th when I came in the morning and afternoon, you said that I have been suspended until following the investigation. What are

you investigating on? I wasn't discharged on the 14th, I was discharged on the 16th, you gave me this on the. 16th, but when I came to work on 14th, you told me there was an investigation going on. What was that investigation?
EMPLOYER WITNESS TESTIFIES AS FOLLOWS:
(HARTNAGLE)
A: The investigation was into allegations of sexual harassment, and customer harassment.
CLAIMANT TESTIFIES AS FOLLOWS:
A: Okay. Who, during the time or course of investigation, whom did you contact? Did you contact me, or did you contact my witness, or did you contact, mainly, who you contacted in the investigation?
EMPLOYER WITNESS TESTIFIES AS FOLLOWS:
(HARTNAGLE)
A: I talked with the people who made the allegations.
CLAIMANT TESTIFIES AS FOLLOWS:
A: Who are they?
EMPLOYER WITNESS TESTIFIES AS FOLLOWS:
(HARTNAGLE)
A: Mae, and Ms. Jones, and Ms. Oakley.
CLAIMANT TESTIFIES AS FOLLOWS:
A: These are the people who accused me. Now, did you find witnesses to support what they said? They make allegations. They make complaint that I did this. Did you look into this to know whether to have witnesses?
EMPLOYER WITNESS TESTIFIES AS FOLLOWS:
(HARTNAGLE)
A: No.
CLAIMANT TESTIFIES AS FOLLOWS:
A: Did you ask me whether I committed that or not?
EMPLOYER WITNESS TESTIFIES AS FOLLOWS:
(HARTNAGLE)
A: Yes, I did.
CLAIMANT TESTIFIES AS FOLLOWS:
A: You asked me?
EMPLOYER WITNESS TESTIFIES AS FOLLOWS:
(HARTNAGLE)
A: Uh-huh.
CLAIMANT TESTIFIES AS FOLLOWS:

When? Did you ask me about this when you gave me this paper? When did you ask me? Let me help you. I came on 14th afternoon for work. You told me that Jorjia Williams called and said I should be suspended without notice, and that I should come on Friday, being the 16th, to know the result of the investigation, and then I asked you, who made the complaint against me? You didn't tell me. You told me to go

Odinkemelu, did you have any objection to those being placed into the Record?
CLAIMANT TESTIFIES AS FOLLOWS:
A: No, I don't have any objection.
Q: Alright. Commission Exhibit, Employer's 1 through 3 shall be placed into the Record. We'll issue a decision in this matter in the next 2 to 3 weeks. Mr. Odinkemelu, continue filing a claim in case the decision goes in your favor, and you may be qualified for benefits during the period of time in question.
A: Alright.
Q: For both parties, if you disagree with the decision, you have 10 days to file an appeal to the Commission. Okay? Thank you.

Certified to as a true and correct copy of transcript of testimony.

s/Sharon Eldridge — 12-29-94
TRANSCRIBING TYPIST III — DATE

Time: 150 minutes

THE RESULT OF JUDGE ALBRIGHT'S FAILURE TO CONDUCT FINDINGS OF FACT BEFORE HIS UNJUST DISMISSAL RULING UNDER RULE 12(b)(6) WAS REVERSIBLE ERROR BY LAW

PL. EX. #17-C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION
CASE NUMBER: 2:95CV00826

MR. CHRISTOPHER J. ODINKEMELU Plaintiff v. CONSOLIDATED STORES INTERNATIONAL Defendant	**BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR PROTECTIVE ORDER**

Defendant, Consolidated Stores Corporation ("CSC") respectfully files this Brief in support of its motion for a protective order, providing that, with respect to Rule 26(a)(3) pretrial disclosures, the defendant need not disclose the last known addresses and telephone numbers of four trial witnesses.

NATURE OF THE MATTER

This issue arises upon CSC's making its pretrial disclosures under Rule 26(a)(3) of the Federal Rules of Civil Procedure. CSC requests a protective order permitting it not to disclose the addresses or telephone numbers

of four potential trial witnesses (Myrtle Foust, Veronica McLean, Alicia Oakley Resendiz, and Karen Jones) who complained that they were harassed or intimidated by plaintiff prior to the termination of his employment with CSC.

COPY OF AN EXCERPT FROM MOORE'S FEDERAL PRACTICE

PLAINTIFF'S EVIDENCE WHICH UNDERMINES DEFENSE CLAIMS OF RULE 41(b)

PL. EX. #18-C

Under certain circumstances, the (class action determination may be regarded as an appealable order or otherwise as reviewable by the court of appeals: *(See* note 84, *infra.)* And it normally involves the resolution of factual issues. Under these conditions, even rulings on the motions excepted from the requirements of Fed. R. Civ. P. 52(a) should ideally be accompanied by findings of fact. In some cases, for instance, failure to make, findings of fact on a dismissal under Rule 12 or a summary judgment under Rule 56 has been deemed reversible error. *See, e.g.,* United States v. Continental Oil Co., 377 U.S. 161, 162, 84 S. Ct. 1155, 12 L. Ed. 2d 213 (1964) (Rule 56); United States v. El Paso Natural Gas Co., 376 U.S. 651, 663, 84 5. Ct. 1044, 12 L. Ed. 2d 12 (1964) (Harlan, J., concurring in part and dissenting in part) (Rule 12). Recent cases demonstrate the wisdom of making findings of fact and conclusions of law on the class action issue, even when the determination is not made by the court sua sponte. In Davis v. Romney, 490 F.2d 1360, 1366 (3d Cir. 1974), it was held that an action could not be treated as a class action, despite plaintiff's uncontested motion for a class determination, when the court had made no determination that a class action was proper and had not defined the class "by order or in the judgment." *Cf.* Bing v. Roadway Express, Inc., 485 F.2d 441, 446-47 (5th Cir. 1973), in which the court of appeals determined that the trial court had made an "implicit" finding that the action should proceed as a class action and, "[b]y examining the briefs and the record," determined that the action was a class action under Fed. R. Civ. P. 23(b)(2). It would be reasonable, however, to expect that an appellate court could ordinarily supply the findings necessary for a class action

under Rule 23(b)(3) by simple resort to the briefs and records. *See* Baxter v. Palmigiano, 425 U.S. 308, 310-11 n.1, 96 S. Ct. 1551, 47 L. Ed. 2d 810 (1976) ("Without . . . certification and identification of the class, the action is not properly a class action."); Board of School Comm'rs v. Jacobs, 420 U.S. 128, 95 5. Ct. 848, 43 L. Ed. 2d 74 (1975) (judgment vacated and complaint dismissed as moot when Rule 23's class certification procedures were not complied with and representative plaintiffs were no longer parties to a viable case or controversy); Lagorio v. Board of Trade, 529 F.2d 1290 (7th Cir. 1976).

DEFENSE PRETRAIL DISCLOSURES LISTING WILLIAMS AS ONE OF DEFENSE WITNESSES BEFORE JUDGMENT WAS ENTERED ON 1ST CASE

PL. EX. #14

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

CASE NUMBER: 2:95CV00826

MR. CHRISTOPHER J. ODINKEMELU,	)	WHY WAS JORJA WILLIAMS LISTED HERE AS A WITNESS ON MARCH 6th, 1998 FOR DEFENDANT, CSC IF ATTORNEYS PAPPAS & MOORE DID NOT LIE UNDER OATH TO STATE COURT JUDGES WHEN THEY MISLED THE JUDGES AT THE HEARINGS THAT JORJA WILLIAMS WAS A DEFENDANT IN THE SAME CASE THAT THEY LISTED HER HERE AS ONE OF DEFENSE WITNESSES FOR THE SOLE DEFENDANT, CSC IN '98?
Plaintiff,	)	
v.	)	
CONSOLIDATED STORES INTERNATIONAL	)	
Defendant.	)	

FINAL PRETRIAL DISCLOSURES

Defendant, Consolidated Stores Corporation ("CSC"), by and through its undersigned counsel and pursuant to Rule 26(a)(3) of the Federal Rules of Civil Procedure, provides the following pre-trial disclosures:

I. The following witnesses may be called to testify at trial:
   A. Witnesses Defendant Expects to Call:
      1. Jorja Williams, Big Lots, 9740 Main Street,

Woodstock, Ga. 30188, (770) 516-5433

2. Steve Page, Big Lots, 9740 Main Street, Woodstock, GA 30188, (770) 516-5433
3. William Hai-tnagle, 1343 New Garden Rd., Greensboro, NC 27410, (336) 856-1739
4. Penny Davis, Consolidated Stores, Human Resources Dept., 300 Phillipi Rd., Columbus, OH 43228, (614) 278-6845
5. Linda Moore, Consolidated Stores, Human Resources Dept., 300 Phillipi Rd., Columbus, OH 43228, (614) 278-6650
6. Myrtle Foust, Greensboro, NC
7. Karen Jones, Greensboro, NC
8. Alicia Oakley Resendiz, Eden, NC
9. Veronica McLean, Greensboro, NC

B. Witnesses Defendant May Call if the Need Arises:

10. Willie Stockton, Big Lots. 1914 Coliseum Blvd., Greensboro, NC, 27405, (336) 854-1496
11. Scott Spencer, Big Lots, 3236 Augusta Rd., WestColumbia, SC 29170, (803) 926-1542
12. John Bryant, 1706 Beaucrest Avenue, High Point, NC 27265, (336) 887-5548
13. Bill Jarrett, Big Lots, 1914 Coliseum Blvd., Greensboro, NC 27405, (336) 854-1496
14. Any witness listed by plaintiff.

II. Defendant does not expect to present testimony by means of a deposition.

III. The follow.ng exhibits may be offered into evidence:

A. Documents which Defendant expects to offer:

1. 1/18/93 Plaintiffs Employment Application
2. 1/13/93 CSC confirmation letter to plaintiff
3. CSC Associate Handbook (including policies re Equal Employment Opportunity; Open Door Policy; Progressive Counseling; Harassment; Standards of Conduct; Termination of Employment; and Refund/Exchange Policy)

23. Telephone verification record for plaintiff
24. Plaintiffs Deposition
25. Interrogatory responses provided and documents produced by the parties in the case

26. Payroll record for plaintiff
27. Refund/exchange receipt
28. Ms. Williams' notes from conversations regarding plaintiff
29. Pleadings filed in this action

This the 6thday of March, 1998.

s/Larry I. Moore, III/pgp
Larry I. Moore, III
N.C. State Bar No. 8912

s/Peter G. Pappas
Peter G. Pappas
N. C. State Bar No. 10464
Counsel for Consolidated Stores Corporation

OF COUNSEL:
ADAMS KLEEMEIER HAGAN HANNAH & POUTS
A Professional Limited Liability Company
Lake Point
701 Green Valley Dr., Suite 100
Post Office Box 3463
Greensboro, NC 27402
(336) 373-1600

PL. EX. #22

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

CASE NUMBER: 2:95CV00826

MR. CHRISTOPHER J. ODINKEMELU	)	
	)	
Plaintiff	)	AFFIDAVIT
	)	OF
v.	)	JORJA
	)	WILLIAMS
CONSOLIDATED STORES INTERNATIONAL,	)	
	)	
Defendant.	)	

Jorja Williams, being first duly sworn, states as follows:

1. I am over 18 years of age and make this affidavit upon my own personal knowledge.

2. I am employed by Consolidated Stores Corporation ("Consolidated") as Regional Human Resources Manager. I have held that position since December of 1990. Consolidated does business under the name "Big Lots" and operates retail stores with the "Big Lots" name.

3. For the period from December of 1992 through the end of 1994, I was the Regional Human Resources Manager for the region which included the Big Lots Stores located in Guilford County, N.C. During that time period my office was located in Roanoke, Virginia, and later, Woodstock, Georgia. The plaintiff in this case, Christopher Odinkemelu, worked for Consolidated from January 1993 to mid-September 1994. He worked at the Big Lots Store in High Point, N.C. and later, at one of the Big Lots Stores in Greensboro, N.C. I was the Human Resources Manager responsible for those stores.

Mr. Odinkemelu had made similar remarks to her, when Mr. Odinkemelu and Ms. McLean were taking deposits to the bank. On December 31, 1993, Ms. Foust and Ms. McLean provided statements concerning those incidents, and the statements are attached hereto as Exhibits 9 and 10 respectively.

19. Mr. Odinkemelu was on vacation when the statements were taken on December 31, 1993. Following the holidays, my schedule did not allow time for me to go to Greensboro to meet with Mr. Odinkemelu and discuss the complaints with him. Because of my schedule, Penny Davis, a human resources manager from Consolidated's corporate office, counseled Mr. Odinkemelu concerning the complaints in February of 1994. When sexual harassment complaints are made, Consolidated's policy provides that the investigation will be conducted with the utmost concern for the confidential and personal nature of the allegation. See Exhibit 5. Ms. Foust and Ms. McLean requested that they remain anonymous, so their identities were not revealed to Mr. Odinkemelu. For that reason, this particular situation was resolved without formal disciplinary action, but Mr. Odinkemelu was warned that future violations of Consolidated's Harassment Policy or its Standards of Conduct Policy, or future instances of harassing conduct would be considered serious and could result in the termination of his employment. At no time was Mr. Odinkemelu ever exonerated of the sexual harassment complaints.

20. Annual performance appraisals are conducted at the conclusion of each fiscal year at Consolidated. Mr. Odinkemelu's Performance Appraisal, dated March 6, 1994, is attached hereto as Exhibit 11. In the employee self-review portion of the appraisal, Mr. Odinkemelu rated himself "Very Good" or "Excellent" in all categories. His written

This the 5 day of January, 1998.

s/Jorja Williams
Jorja Williams

Sworn to and subscribed
before me this the 5th day
of January, 1998.

s/Barbara S. Martin
Notary Public

Notary Public, Cobb County, Georgia
My Commission Expires May 20, 2000

PAGE 14 OF THE U.S. DISTRICT COURT'S RECORD OF ALL TRANSACTIONS & COURT PROCEEDINGS IN PLAINTIFF'S 1ST FED. CASE

PLAINTIFF'S EVIDENCE THAT SHOWS QUALITY OF PENDENT JURISDICT IN THIS CASE.

PL. EX. #12

Proceedings include all events. 18BA APPEAL
2:95cv826 CLOSED

1/9/98	66	MEMORANDUM by CONSOLIDATED STORES in support of [65-1] motion to Dismiss for refusal to comply with all parts of the Court's Order entered on 10/22/97 and for its attorney's fees & costs in filing this Motion, [65-2] motion for Sanctions. (jl)
1/9/98	67	MOTION for Summary Judgment purs. to Rule 56 FRCP by defendant CONSOLIDATED STORES (jl)
1/9/98	68	MEMORANDUM by CONSOLIDATED STORES in support of [67-1] motion for Summary Judgment purs. to Rule 56 FRCP by CONSOLIDATED STORES (jl)
1/9/98	69	AFFIDAVIT of STEVE PAGE by CONSOLIDATED STORES Re: [67-1] motion for Summary Judgment purs. to Rule 56 FRCP by CONSOLIDATED STORES (jl)

1/9/98	70	AFFIDAVIT of PENNY DAVIS by CONSOLIDATED STORES Re: [67-1] motion for Summary Judgment purs. to Rule 56 FRCP by CONSOLIDATED STORES (jl)
1/9/98	71	AFFIDAVIT of LINDA MOORE by CONSOLIDATED STORES Re: [67-1] motion for Summary Judgment purs. to Rule 56 FRCP by CONSOLIDATED STORES (jl)
1/9/98	72	AFFIDAVIT of JORJA WILLIAMS by CONSOLIDATED STORES Re: [67-1] motion for Summary Judgment purs. to Rule 56 FRCP by CONSOLIDATED STORES (SEALED) (jl)
1/9/98	73	AFFIDAVIT of WILLIAM HARTNAGLE by CONSOLIDATED STORES Re: [67-1] motion for Summary Judgment purs. to Rule 56 FRCP by CONSOLIDATED STORES (SEALED) (jl)
1/9/98	74	AFFIDAVIT of MYRTLE FOUST by CONSOLIDATED STORES Re: [67-1] motion for Summary Judgment purs. to Rule 56 FRCP by CONSOLIDATED STORES (SEALED) (jl)
1/9/98	75	AFFIDAVIT of ALICIA OAKLEY RESENDIZ by CONSOLIDATED STORES Re: [67-1] motion for Summary Judgment purs. to Rule 56 FRCP by CONSOLIDATED STORES (SEALED) (jl)
1/9/98	76	AFFIDAVIT of VERONICA MCLEAN by CONSOLIDATED STORES Re: [67-1] motion for Summary Judgment purs. to Rule 56 FRCP by CONSOLIDATED STORES (SEALED) (jl)
1/9/98	77	AFFIDAVIT of KAREN JONES by CONSOLIDATED STORES Re: [67-1] motion for Summary Judgment purs. to Rule 56 FRCP by CONSOLIDATED STORES (SEALED) (jl)
1/26/98	78	Letter to Pro Se party, RE: Right to Respond. (jl)
1/26/98	79	RESPONSE (OBJECTIONS) by CHRIS J. S. ODINKEMELU to CONSOLIDATED STORES'S [65-1] motion to Dismiss & [65-2]

motion for Sanctions in conjunction with defense witnesses' false statements rendered. (jl) [Entry date 01/27/98]

1/26/98 80 AFFIDAVIT of CHRIS J. ODINKEMELU Re: [79-1] motion response with exhibits (UNDER SEAL) (ji) [Entry date 01/27/98]

1/26/98 -- Telephonic Notice to pro se pltf: letter dated 1/26/98 re right to respond inadvertently sent to him. He will need to comply w/deadlines for filing responses & replies to disp. motion as set out in Mag/Judge Sharp's Order of 10/22/97. (glp) [Edit date 01/28/98]

1/26/98 -- Deadline updated; Response to Motion set for 1/30/98 for [67-1] motion for Summary Judgment purs. to Rule 56 FRCP, set for 1/30/98 for [65-1] motion to Dismiss for refusal to comply with all parts of the Court's Order entered on 10/22/97 and for its attorney's fees & costs in filing this Motion, set for 1/30/98 for [65-2] motion for Sanctions, Reply to Response to Motion reset to 2/10/98 for [67-1] motion for Summary Judgment purs. to Rule 56 FRCP, reset to 2/10/98 for [65-1] motion to Dismiss for refusal to comply with all parts of the Court's Order entered on 10/22/97 and for its attorney's fees & costs in filing this Motion, reset to 2/10/98 for [65-2] motion for Sanctions (see 10/22/97 Order #58) (glp)

1/30/98 81 RESPONSE (OBJECTIONS) by CHRIS J. S. ODINKEMELU to [67-1] motion for Summary Judgment purs. to Rule 56 FRCP by CONSOLIDATED STORES (jw) [Entry date 02/02/98]

2/4/98 -- TRIAL CALENDAR mailed to parties for session beginning 4/6/98 at 9:30 in WS (sf)

2/6/98 82 MOTION by CHRIS J. S. ODINKEMELU for extension of time to enable him to rectify and submit a proper response with correct and relevant documents to deft's motion for summary judgment. Pltf. did not contact

opposing counsel. (cg) [Entry date 02/09/98] [Edit date 02/09/98]

2/6/98 83 MEMORANDUM by CHRIS J. S. ODINKEMELU in support of [82-1] motion for extension of time to enable him to rectify and submit a proper response with correct and relevant documents to deft's motion for summary judgment. (cg) [Entry date 02/09/98]

2/10/98 84 REPLY BRIEF by CONSOLIDATED STORES to response to [65-1] motion to Dismiss for refusal to comply with all parts of the Court's Order entered on 10/22/97 and for its attorney's fees & costs in filing this Motion, [65-2] motion for Sanctions. (cg)

2/10/98 85 REPLY BRIEF by CONSOLIDATED STORES to response to [67-1] motion for Summary Judgment purs. to Rule 56 FRCP. (cg)

2/10/98 -- Motion(s) referred: [82-1] motion for extension of time to enable him to rectify and submit a proper response with correct and relevant documents to deft's motion for summary judgment referred to Mag/Judge P. T. Sharp (glp)

2/13/98 86 MOTION by CONSOLIDATED STORES to stay deadlines for trial briefs, proposed jury instructions, voir dire questions and Rule 26(a) (3) disclosures. (ve) [Entry date 02/17/98] [Edit date 02/19/98]

2/17/98 -- Motion submission: [86-1] motion to stay deadlines for trial briefs, proposed jury instructions, voir dire questions and Rule 26(a) (3) disclosures submitted to Judge Tilley (glp) [Entry date 02/18/98]

2/18/98 -- Motion submission: [65-2] motion for Sanctions submitted, [65-1] motion to Dismiss for refusal to comply with all parts of the Court's Order entered on 10/22/97 and for its attorney's fees & costs in filing this Motion

submitted, [67-1] motion for Summary Judgment purs. to Rule 56 FRCP submitted to Judge Tilley (glp)

2/18/98 87 ORDER Re: [82-1] motion for extension of time to enable him to rectify and submit a proper response with correct and relevant documents to deft's motion for summary judgment, Response to Motion set for 2/28/98 for [67-1] motion for Summary Judgment purs. to Rule 56 FRCP, the supplemental Response is limited to 4 pages since Plaintiff has already filed a 16-page response under date of 1/30/98 Supplemental Reply to Response to reset to 3/10/98 for [67-1] motion for Summary Judgment purs. to Rule 56 FRCP (signed by Mag/Judge P. T. Sharp). (ve) [Entry date 02/19/98] [Edit date 02/23/98]

2/19/98 88 ORDER denying [86-1] motion to stay deadlines for trial briefs, proposed jury instructions, voir dire questions and Rule 26(a) (3) disclosures. In re: [65-1] Motion to dismiss & [79-1] Response to same, more information is necessary to rule, and ordering that Deft shall file with the Court, by 2/25/98, and forward to the pltf, a document setting individually, the discreet documentation and/or information requested which, allegedly, has not been provided. Pltf shall file a response, with a copy to deft., by 3/5/98 setting out any reasons claimed as justification for not providing requested information. Deft. may reply by 3/10/98 (Signed by Judge N. C. Tilley Jr.). (ve) [Edit date 02/20/98]

2/20/98 -- Deadline updated; Reply to Response to Motion reset to 3/10/98 for [67-1] motion for Summary Judgment purs. to Rule 56 FRCP (ve)

2/25/98 89 RESPONSE by CONSOLIDATED STORES pursuant to court order of 2/20/98 and in support of [65-1] motion to Dismiss for refusal

		to comply with all parts of the Court's Order entered on 10/22/97 and for its fees & costs in filing this Motion and [65-2] motion for Sanctions. (ve) [Entry date 02/26/98]
2/27/98	90	FURTHER RESPONSE by CHRIS J. S. ODINKEMELU to [67-1] motion for Summary Judgment purs. to Rule 56 FRCP by CONSOLIDATED STORES. (cg) [Entry date 03/02/98]
3/2/98	91	AFFIDAVIT (UNDER SEAL) of Christopher J. Odinkemelu by CHRIS J. S. ODINKEMELU Re: [90-1] further response to deft's motion for summary judgment. (cg)
3/2/98	92	Objections by CHRIS J.S. ODINKEMELU to [89-1] support memorandum by CONSOLIDATED STORES. (cg)
3/5/98	93	NOTICE of Hearing: setting Settlement Conference for 11:00 3/18/98 G-1 (jm)
3/6/98	94	MOTION by CONSOLIDATED STORES for Protective Order that the deft. need not disclose the last known addresses and telephone numbers of four trial witnesses, Myrtle Foust, Veronica McLean, Alicia Oakley Resendiz and Karen Jones. (cg)
3/6/98	95	BRIEF by CONSOLIDATED STORES in support of [94-1] motion for Protective Order that the deft. need not disclose the last known addresses and telephone numbers of four trial witnesses, Myrtle Foust, Veronica McLean, Alicia Oakley Resendiz and Karen Jones. (cg)
3/10/98	96	SUPPLEMENTAL REPLY BRIEF by CONSOLIDATED STORES in support of [67-1] motion for Summary Judgment purs. to Rule 56 FRCP & pursuant to the Court's Order of 2/18/98. (cg) [Entry date 03/11/98]
3/10/98	97	REPLY by CONSOLIDATED STORES pursuant to the Court's 2/19/98 Order, and in support of [65-1] motion to Dismiss, & [65-2] motion for Sanctions. (cg) [Entry date 03/11/98] [Edit date 03/11/98]

3/12/98	98	ORDER (signed by Judge N. C. Tilley, Jr.) [94-1] motion for Protective Order to withhold disclosure of the last known addresses of witnesses is DENIED. There is no present showing that the persons would, as witnesses, be the subject of harassment. Any attempt to harass a witness is punishable as a federal criminal offense which carries a term of imprisonment. Ccs. to counsel. (cg)
3/13/98	99	OBJECTION (to deft's reasons for seeking for protective order) by CHRIS J. S. ODINKEMELU to [94-1] motion for Protective Order by CONSOLIDATED STORES (cg) [Entry date 03/16/98]
3/17/98	100	TRIAL BRIEF by CONSOLIDATED STORES (cg)
3/17/98	101	Proposed Voir Dire Questions by CONSOLIDATED STORES (cg)
3/17/98	102	Preliminary Jury Instructions by CONSOLIDATED STORES (cg)
3/18/98	103	MOTION by CHRIS J. S. ODINKEMELU to Extend Time until 3/23/98 to file Trial Brief. (cg) [Entry date 03/19/98]
3/18/98	--	Settlement Conference held before Judge William L. Osteen Sr. (jm) [Entry date 03/19/98]
3/19/98	104	RESPONSE by CONSOLIDATED STORES to [103-1] motion to Extend Time until 3/23/98 to file Trial Brief by CHRIS J. S. ODINKEMELU (cg)
3/20/98	105	ORDER (signed by Judge N. C. Tilley Jr.) Pltf. has filed a motion for extension of time to file a trial brief (Pldg No. 113) . In response to this motion, the court orders that pltf. has until 3/23/98 to submit a trial brief along with a motion setting out any and all reasons why the court should accept such a late filing. The court reserves ruling on, and may impose, the full range of

		available sanctions in conjunction with pltf's late filing. This order does not affect the previously scheduled trial date for this matter. Ccs. to counsel. (cg)
3/23/98	106	MEMORANDUM by CHRIS J. S. ODINKEMELU in support of [103-1] motion to Extend Time until 3/23/98 to file Trial Brief (jw) [Entry date 03/24/98]
3/23/98	107	TRIAL BRIEF by CHRIS J. S. ODINKEMELU (jw) [Entry date 03/24/98]
3/23/98	108	Preliminary Jury instructions by CHRIS J. S. ODINKEMELU (jw) [Entry date 03/24/98]
3/23/98	109	Voir Dire Questions by CHRIS J. S. ODINKEMELU (jw) [Entry date 03/24/98]
3/27/98	110	RESPONSE by defendant CONSOLIDATED STORES to [106-1] support memorandum by CHRIS J. S. ODINKEMELU (jw) [Entry date 03/30/98]
4/3/98	111	MEMORANDUM OPINION (signed by Judge N. C. Tilley Jr.) For the foregoing reasons, CSC's Motion for Summary Judgment is DENIED, as to Mr. Odinkemelu's claim for retaliatory discharge and discriminatory discharge and GRANTED as to any other claims. Copies to counsel. (jw)
4/3/98	112	ORDER (signed by Judge N. C. Tilley Jr.) for reasons stated in the Memorandum Opinion filed contemporaneously with this Order. It is hereby Ordered that deft's Motion for Summary Judgment is DENIED as to Mr. Odinkemelu's claims for retaliatory discharge and discriminatory discharge and GRANTED as to any other claims. Copies to counsel. (jw)
4/6/98	--	Jury Selection held before Judge William L. Osteen Sr., W-S. Beck Rptr. Jury of 10 selected and told to report for trial on 4/29/98 at 9:30 a.m. (possibly in G'boro) (jm) [Entry date 04/29/98]

4/13/98	113	RESPONSE by plaintiff CHRIS J. S. ODINKEMELU to [114-1] deft's Objections to Pltf's Pre-Trial Disclosures. (cg) [Entry date 04/15/98] [Edit date 04/15/98]
4/15/98	114	Objection(s) by defendant CONSOLIDATED STORES to Pltf's Pretrial Disclosures FRCVP 26 (a) (3) . (cg)
4/16/98	--	Telephonic Notice of Status Conference, 4/17/98 @ 3:00 p.m. in W-S. To Pappas & Pltf Odinkemelu by message on answering machine. (jm) [Entry date 04/29/98]
4/17/98	--	Status Conference held before Judge William L. Osteen Sr. W-S. Snyder Rptr. Pltf not present. Conference involved subpoenas issued by pltf. (jm) [Entry date 04/29/98]
4/24/98	115	TRANSCRIPT of Motions Hearing held 4/17/98 before Judge Osteen in WS, NC. Ct. Rptr. Snyder. (located in expandable folder) (cg)
4/24/98	--	Telephonic Notice to pro se plaintiff and Atty Moore that trial will begin 4/29/98 at 9:30 in WS before Judge Beaty. (sf) [Entry date 04/27/98]
4/24/98	116	MOTION by CHRIS J. S. ODINKEMELU for protection of his witnesses employment with Consolidated Stores International with attachments (jw) [Entry date 04/27/98]
4/24/98	117	MOTION by CHRIS J. S. ODINKEMELU for the exclusion of his false accusers from posing as defense witnesses against him in this action. (jw)
4/27/98	118	MEMORANDUM by CHRIS J. S. ODINKEMELU in support of [117-1] motion for the exclusion of his false accusers from posing as defense witnesses against him in this action. (jw)
4/28/98	119	MOTION by CONSOLIDATED STORES in Limine (jw)

4/28/98	120	MEMORANDUM by CONSOLIDATED STORES in support of [119-1] motion in Limine (jw)
4/29/98	--	Jury impaneled (dm) [Entry date 04/30/98]

Docket as of June 10, 1998 3:17 pm

EXCERPTS FROM MOORE'S FEDERAL PRACTICE ON CITED CASES

PL. EX. #21

PAGE 669:

N.70 The district court had the power to exercise pendent jurisdiction over the plaintiff's claim that he was discharged in violation of state law since the plaintiff alleged a substantial federal constitutional claim - that he was discharged to discourage union membership. **In order for the district court to exercise its discretion to rule on a state law claim, the court must have jurisdiction over a substantial federal claim and both claims must arise out of a "common nucleus of operative fact."** This determination must be made on the pleadings alone and not the contents of the record or the, proof offered at the preliminary hearing. **Both the federal and state claims in the instant case arose from the plaintiff's discharge. The state law issues were subsidiary to the federal claim and so did not substantially predominate, nor were they too complex.** Considerations of judicial economy, convenience and fairness to the litigants favor pendent jurisdiction. Finally, the plaintiff's federal claim was grounded in the Civil Rights Act, 42 USC § 1983, which has a strong policy of insuring access to a federal forum. Jackson V. Stinchcomb (CA5th, 1981) 635 F2d 462.

In a civil rights action plaintiff medical center sought declaratory and injunctive relief establishing its right to perform abortions without interference from certain citi-

zens. On appeal, the citizens asserted that the district court's injunction restraining them should be vacated and their contempt convictions reversed because that court lacked jurisdiction. Holding that pendent jurisdiction sustained the district court order, the court of appeals explained that the pleading has alleged a close relationship between the plaintiff's substantial federal constitutional claim and its state claim based on trespass. Northern Virginia Women's Med. Ctr. v. Balch (CA4th, 1980) 617 F2d 1045.

In action by State of North Dakota seeking review of decision by the Comptroller of the Currency which had permitted banks located in North Dakota to change their names despite objections by the State, the State also brought pendent claims against the banks for violation of the state common law of unfair competition. **The court of appeals ruled that the district court had not been in error in ruling on the pendent claims, despite the fact that the federal and state claims involved different defendants.** Before it can be concluded that pendent party jurisdiction exists; a federal court must determine not only that Article III permits it but that Congress in the statutes conferring jurisdiction has not expressly or by implication negated its existence. In the instant case, federal jurisdiction was based on the general federal question statute, 28 USC § 1331(a). The court of appeals found that Congress did not intend to exclude parties like the defendant banks from federal court in judicial review actions brought under § 1331(a). The district court therefore properly ruled on the pendent claim, which was intimately intertwined with the federal one. The State sought to enjoin conduct by private parties that was authorized by the

PAGE 663:

N. 32 Westmoreland Hospital Ass'n v. Blue Cross of Western Pa. (CA3d, 1979) 605 F2d 119 (discussed ¶ 0.62[2.-2], n. 12, *supra* this Supp).

PAGE 664:

N. 41 Where plaintiffs alleged that defendants' conduct, under color of state law, deprived them of property rights

without due process of law, in violation of the Fifth and Fourteenth Amendments, the district court erred in dismissing the complaint for lack of subject matter jurisdiction. The complaint, alleging a concerted use by public and private persons to misuse municipal expropriation powers in order to coerce plaintiffs to sell their property at a price below its value on its face established a federal claim. Defendants argued that plaintiff sold the land voluntarily, and at most, plaintiff had a tort claim more appropriate to state court. The court of appeals found the federal constitutional and statutory claims, pursuant to 28 USC§§ 1331 and *1343(3),* were not immaterial or patently without merit; therefore the district court had jurisdiction. Suthoff v. Yazoo County Devel. Comm. (CA5th, 1981) 637 F2d 337.

The district court improperly dismissed a prisoner's complaint that denial of visitation rights violated due process, since sanctions were allegedly imposed by federal officials without affording the plaintiffs an opportunity to contest the accusations upon which the sanctions were based. Since it was the alleged constitutional violation which gave rise to the damages sought, a material question arising under the Constitution was presented and federal question jurisdiction was established. The alleged due process violation was neither wholly insubstantial nor frivolous. Miller v. Stanmore (CA5th, 1981) 636 F2d 986.

Plaintiffs sued a town and its mayor for damages for the taking of their property without due process. On appeal from an adverse judgment, defendants challenged the court's jurisdiction over the town. In reversing, the court of appeals held that the action was maintainable under two jurisdictional statutes. A direct cause of action could be brought against the town under the Fifth and Fourteenth Amendments, and a civil rights action could be brought against both the mayor and the town. McCulloch v. Glasgow (CA5th, 1980) 620 F2d 47.

PL. EX. #11

N. 43 Mt. Healthy City School Dist. Bd. of Educ. v. Doyle (1977) 429 US 274, 97 S Ct 568, 50 L ed2d 471.

In an action alleging local taking of property without just compensation, the district court acted properly in assuming jurisdiction although it had been alleged that such claim fell short of constituting a fifth or fourteenth amendment taking. Under the doctrine of *Bell v. Hood,* where a complaint may or may not state a federal claim, the district court may assume jurisdiction to rule on the merits so long as the questions raised are not frivolous on their face. Donohue Construction Co., Inc. v. Montgomery County Council (CA4th, 1977) 567 F2d 603.

Plaintiffs, formerly professors, filed a complaint alleging that they were denied procedural due process when the University terminated their employment without hearings. The defendants asserted under Rule 12(h)(3) that the court lacked jurisdiction over the subject matter of the case, since the only question was one of state contract law. The court noted that although only declaratory and injunctive relief was sought, the case met the jurisdictional amount in controversy required by 28 USC § 1331. The court stated that plaintiffs complaint was not that the University breached its contracts with them, but that each of them had an expectation of continued employment (i.e. tenure) which arose not from the terms of the contract but from other circumstances surrounding their service as professors. This expectation was allegedly of sufficient magnitude that the state could not dispossess them of it without due process of law. The court stated that the question whether, under the circumstances in this case, the plaintiff actually enjoyed such unwritten property rights, was yet to be decided. Nevertheless, the case raised a federal question of sufficient magnitude to permit the court to exercise its jurisdiction under 28 USC § 1331. Accordingly, the defendant's motion to dismiss was denied. Steinberg v. Elkins (D Md 1979) 470 F Supp 1024.

PAGE 665:

N. 47 Respondent brought suit on behalf of the estate of

her deceased son alleging :that he suffered personal injuries from which he died because petitioners, federal prison officials, violated his due process, equal protection and Eighth Amendment rights. Jurisdiction was based on 28 USC § 1331(a), and while the district court held that respondent's allegations gave rise to a cause of action for damages under *Bivens,* it dismissed the complaint. In its view, the damages remedy as a matter of federal law was limited to that provided by Indiana's survivorship and wrongful death laws which in this case provided for damages of less than $10,000, the amount in controversy required under § 1331(a). On appeal, the court of appeals acknowledged that a cause of action was stated under *Bivens* but reversed the holding that § 133l(a)'s jurisdictional amount requirement was not met. On certiorari, the Supreme Court affirmed. Among other things, the Supreme Court found that a Bivens action was not defeated by either of its two exceptions. First, the case involved no special factors conselling hesitation in the absence of affirmative action by Congress. Second, despite the fact that an action could have been maintained under the Federal Tort Claims Act (FTCA), there was nothing in the Act's legislative history to show that Congress meant to pre-empt a *Bivens* remedy or to create an equally effective remedy for constitutional violations. Therefore, in the absence of a contrary expression from Congress, 28 USC § 2680(h) thus contemplated that victims of the kind of intentional wrongdoing alleged in this complaint had an action under FICA against the United States as well as a *Bivens* action against the individual officials alleged to have infringed their constitutional rights. Furthermore, the Court lists four additional factors to support this conclusion

COPY OF AN EXCERPT FROM MOORE'S FEDERAL PRACTICE

ONE OF THE 3 REQUISITES OF RULE OF LAW THAT OVERRIDES THE DISTRICT COURT'S CLAIM OF LACK OF SUBJECT MATTER JURISDICTION

PL. EX. #19-A

DIVERSITY JURISDICTION

Randolph of Virginia specifically included cases in which "citizens of other States" may be interested.[7] Nevertheless it was the Virginia plan which served as the main basis for discussion by the convention.[8] When the committee of the whole considered the scope of federal court jurisdiction, the specific grants contained in the Virginia resolution were dropped in favor of the general principle that the jurisdiction should extend to "all cases arising under the National laws: And to such other questions as may involve the National peace and Harmony."[9] This resolution, along

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[7] *ibid.*

[8] Farrand. The Framing of the Constitution (1913) 68, 72, 89. The convention resolved itself into a committee of the whole to consider the Virginia resolutions (Documents, 119-120), and after the New Jersey plan was submitted, voted to re-report the amended Virginia resolutions as preferable to the New Jersey ones. *Id.* at 234 (Madison's notes), 785 (Yates' notes).

[9] Farrand, *op cit supra,* n 8, at 79, 119. When the matter of jurisdiction first came to a vote, the resolution was amended to: cases in which foreigners or citizens of "two distinct States of the Union" may be interested. Documents 198. The detailed jurisdictional clause was then dropped in favor of "cases, which respect the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony." *Id.* at 198, (Madison's notes), 768 (Yates' notes). In the report of the Committee of the Whole, the clause appears in the same form. *Id.* at 202-203 (Madison's notes). 883 (Paterson's notes), re-reported. 236. On Madison's motion, it was then amended to read as it appears in the text. *Id.* at 405, and was referred in somewhat the same form to the committee of detail. *Id.* at 465, 469.

with the others which had received preliminary approval, was referred to a committee to prepare the detailed wording of the Constitution.[10] The report of the committee of detail again specified the extent of the national judicial power including therein, "controversies . . . between Citizens of different States, and between a State or the Citizens thereof and foreign States, citizens or subjects."[11] Although the Convention made some subsequent amendments to the judiciary article, the inclusion of diversity and alienage within the scope of jurisdiction was apparently

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[10]The plans of New Jersey (Paterson) and Pinckney were also referred to the committee of detail. Documents, 471.

[11]Documents. 479; Farrand. *op cit supra,* n 8, at 155-156. A fair inference is that the Convention thought the diversity and alienage clauses were covered in principle by "questions as may involve the National peace and Harmony." See Hart and Wechsler, *op cit supra;* n 5, at 19.

COPY OF SWORN AFFIDAVIT FROM STATE OF GEORGIA WHICH STATES THAT JORJA WILLIAMS IS CITIZEN OF GEORGIA STATE

PL. EX. #19-B

STATE OF GEORGIA

CHEROKEE COUNTY

Jorja Williams, being duly sworn, deposes and says that she is Human Resources Manager of Consolidated Stores Corporation ("Consolidated Stores") and is duly authorized to verify the foregoing Consolidated Stores' Responses to Plaintiffs Questions; that she has read the foregoing Responses and knows the contents thereof; that as to those responses of which she has personal knowledge, she knows that such responses are true; as to those responses based upon knowledge and information of other officers, directors, agents and employees of Consolidated Stores, she believes them to be true.

s/Jorja Williams
Jorja Williams

Sworn to and subscribed
before me this the 23 day
of May, 1997.

s/Ned Sallo
Notary Public

My Commission Expires April 1, 2001

COPY OF NATURALIZATION CERTIFICATE STATING THE PLAINTIFF IS A CITIZEN OF NORTH CAROLINA STATE PERMANENTLY

PL. EX. #19-C

BEST AVAILABLE COPY

ONE OF THE 3 REQUISITES OF RULE OF LAW FOUND IN THIS CASE

PL. EX. #19-D

Plaintiff's annual salary as Big Lots Asst. Mgr. multiply by total number of years from the date he was involuntarily discharged on Sept. 1994 to the present year minus his total yearly income from the date he got his present lower rate job is in excess of $90,000.00.

GENERAL RULES OF PLEADING (EXTRACT)

ONE OF THE 3 REQUISITES OF THE RULE OF LAW THAT OVERRIDES THE DISTRICT COURT'S CLAIM OF LACK OF SUBJECT MATTER JURISDICTION

PL. EX. #20

Damages in excess of $3,000 [the then jurisdictional amount] from defendants, who were agents of the Federal Bureau of Investigation. The complaint alleged that jurisdiction is founded upon federal questions arising under the Fourth and Fifth Amendments to the Constitution; that damages were suffered as a result of the defendants imprisoning the plaintiffs in violation of their Constitutional right to be free from deprivation of their liberty without due process of law, and subjecting their premises to search and their possessions to seizure, in violation of their Constitutional right to be free from unreasonable searches and seizures. In holding that a general federal question was presented and in reversing the lower courts' dismissal for want of jurisdiction, Mr. Justice Black stated:

> "Whether or not the complaint as drafted states a common law action in trespass made actionable by state law, it is clear from the way it

was drawn that petitioners seek recovery squarely on the ground that respondents violated the Fourth and Fifth Amendments. It charges that the respondents conspired to do acts prohibited by these amendments and alleges that respondents' conduct pursuant to the conspiracy resulted in damages in excess of $3,000. It cannot be doubted therefore that it was the pleaders' purpose to make violation of these Constitutional provisions the basis of this suit. Before deciding that there is no jurisdiction, the district court must look to the way the complaint is drawn to see if it is drawn so as to claim a right to recover under the Constitution and laws of the United States. For to that extent 'the party who brings a suit is master to decide what law he will rely upon, and . . . does determine whether he will bring a "suit arising under" the . . . [Constitution or

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In Duke Power Co. v. Carolina Environmental Study Group, Inc. (1978) 98 S Ct 2620, 57 L ed2d 595, an action involving violations of constitutional rights, plaintiffs erroneously alleged the district court had jurisdiction under 28 USC § 1337. The Supreme Court found jurisdiction instead under 28 USC §1331(a), the general federal question statute. It held that the test for determining whether jurisdiction existed under § 1331(a) was not whether the parties could actually recover on the constitutional claims but whether the cause of action was so patently without merit as to justify dismissal for want of jurisdiction. In this case it found plaintiffs' causes of action sufficiently substantial and colorable to sustain jurisdiction under § 1331(a).

An allegation that defendants were depriving plaintiff of his lawful inheritance without due process of law and in violation of the Fourteenth Amendment does not state a federal question where not supported by any allegation of fact tending to show the existence of a federal question. Givens v. Moll (CA5th, 1949) 177 F2d 765, cert den (1949) 339 US 964, 70 S Ct 999, 94 L ed 1373. The rule of Bell v. Hood and Hurn v. Oursler was followed in Strachman v. Palmer (CA1st, 1949) 177 F2d 427, 12 ALR2d 687, 13 FR Serv 18a.41, Case 2. See also ¶ 2.06[5], *supra*.

Cf. Downing v. Howard (D Del 1946) 68 F Supp 6, aff'd (CCA3d, 1947) 162 F2d 654, cert den (1947) 332 US 818, 68 S Ct 155, 92 L ed 395.

laws] of the United States by his declaration or bill.' The Fair v. Kohler Die & Specialty Co. 228 US 22, 25, 33 S Ct 410 411, 57 L ed 716 . . . .

"Jurisdiction, therefore, is not defeated as respondents seem to contend, by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover. For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction. Whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court has assumed jurisdiction over the controversy. If the court does later exercise its jurisdiction to determine that the allegations in the complaint do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction. Swafford v. Templeton, 185 US 487, 493, 494, 22 S Ct 783, 785, 786, 46 L ed 1005; Binderup v. Pathe Exchange, 263 US 291, 305-308, 44 5 Ct 96, 98-99, 68 L ed 308. The previously carved out exceptions are that a suit may sometimes be dismissed for want of jurisdiction where the alleged claim under the Constitution or federal statutes clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such a claim is wholly insubstantial and frivolous. The accuracy of calling these dismissals jurisdictional has been questioned. The Fair v. Kohler Die & Specialty Co., *supra,* 228 US at page 25, 33 S Ct at page 411, 57 L ed 716. But *cf.* Swafford v. Templeton, *supra.*

"But as we have already pointed out the alleged violations of the Constitution here are not immaterial but form rather the sole basis of the relief sought. Nor can we say that the cause of action alleged is so patently without merit as to justify, even under the qualifications noted, the court's dismissal for want of jurisdiction . . . the

complaint does in fact raise serious questions, both of law and fact, which the district court can decide only after it has assumed jurisdiction over the controversy. The issue of law is whether federal courts can grant money recovery for damages said to have been suffered as a result of federal officers violating the Fourth and Fifth Amendments. That question has never been specifically decided by this Court. . . the issue thus raised has sufficient merit to warrant exercise of federal jurisdiction for purposes of adjudicating it. . . . Whether the petitioners are entitled to recover depends upon an interpretation of 28 USC § 41(1), and on a determination of the scope of the Fourth and Fifth Amendments' protection from unreasonable searches and deprivations of liberty without due process of law. Thus, the right of the petitioners to recover under their complaint